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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SAMUEL REISMAN,  
JOSEPH J. BYRNES,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

FILED

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APPELLEE'S BRIEF

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APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

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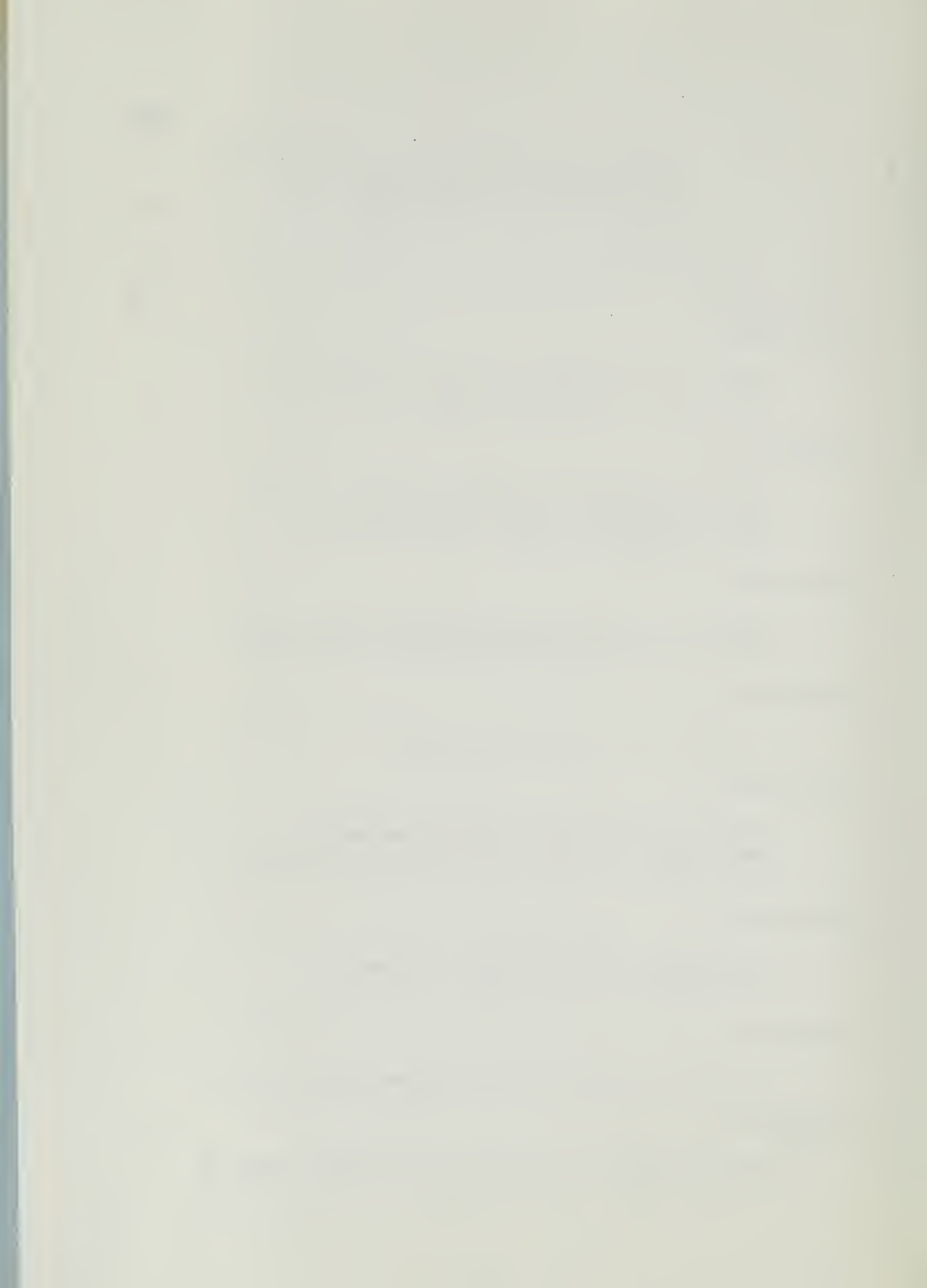


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I

JURISDICTION AND  
STATEMENT OF THE CASE

The Federal Grand Jury for the Southern District of California, Central Division, returned Indictment No. 33496-CD on April 2, 1964, charging appellants and nine co-defendants with mail fraud in violation of Title 18, United States Code, Section 1341. (C. T. 2-87) <sup>1/</sup> On April 6, 1965, trial by jury commenced before the Honorable E. Avery Crary, United States District Judge, (C. T.

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<sup>1/</sup> "C. T. " refers to Clerk's Transcript; Ex. refers to Exhibits; all undesignated numbers refer to the Reporter's Transcript.



731) and 13 weeks later, on July 2, 1965, verdicts of guilty were returned as to both appellants on 78 of 79 counts. (C. T. 1004) On August 10, 1965, the Court entered judgment of acquittal on Counts Two and Three as to each appellant. Both were sentenced to 10 months in prison, but sentence was suspended and they were placed on probation. Both were also fined \$800 on each of 38 counts, totaling \$30,400, (C. T. 1130) and on August 18, 1965, appellants gave notice of appeal. (C. T. 1136, 1138)

The jurisdiction of the District Court was based upon Title 18, United States Code, Section 1341, and this Court has jurisdiction to entertain this appeal under the provisions of Title 28, United States Code, Sections 1291 and 1294.

## II

### STATUTE INVOLVED

Title 18, United States Code, Section 1341, provides as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented



to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both."

### III

#### STATEMENT OF FACTS

Since this is an appeal from a determination of guilt, the evidence and all reasonable inferences therefrom are to be viewed in the light most favorable to the Government. Glasser v. United States, 315 U.S. 60 (1942); Kaplan v. United States, 329 F.2d 561 (9th Cir. 1964). Since appellant has submitted a "summary of the facts" of less than eight pages consisting almost entirely of Reisman's testimony and that of witnesses favorable to him, the Government furnishes the following brief statement of facts.





A.     BACKGROUND:

Gamble Ranch was purchased by B. M. Stewart's company in 1952 and was used principally for the production of livestock. (Stewart, 882-884) The ranch is approximately forty-six miles long and twenty-two miles wide, and most of it lies in the northeast corner of Nevada. (Ex 1-261, p. 9) The southeast portion of the ranch contains sage brush and was used as winter grazing land. (Stewart, 888-889) North and west of the railroad track which bisects the ranch are the ranch headquarters, feed mill, housing area, farming operations, and several reservoirs. (Stewart, 890) Stewart also installed eleven irrigation wells, and some roads, and brought electricity to the ranch. (Stewart, 892-893) Of the approximate one million dollars Stewart spent for agricultural improvements on the ranch, none was spent on the property southeast of the railroad. (Stewart, 917-918) None of the agricultural lands were there (Stewart, 898) and there were no man made improvements there other than three stock watering facilities. (Stewart, 891-892) Nor were there any springs, streams or pine trees on the flat land southeast of the track. (Stewart, 995, 916-917) Among local residents, this area is known simply as "the desert." (Pearson, 4960-4961) More than half of the ranch area is owned by the United States Government in the form of alternate sections of land. (Ex. 1-415, pp. 11, 15)

In June, 1959, Arnold Clejan purchased the ranch with a down payment and the balance secured by a trust deed and mortgage.



(Ex. 1-415, p. 9) The sale price averaged out to approximately \$10.00 per acre. (Stewart, 904) On September 9, 1959, pursuant to prior agreement, Joseph J. Byrnes and Joseph Benaron each purchased an undivided 5% interest in the ranch and agreed to lend Clejan \$23,000. (Ex. 1-415, p. 10)

Also in September, 1959, Clejan requested Stewart to come to Los Angeles where Stewart met Byrnes, Benaron, and Samuel Reisman. Subsequently, Stewart went to Elko, Nevada, with Clejan, Benaron and Reisman and negotiated the release of certain lands on the ranch from the mortgage. (Stewart, 908-909) Neither Clejan, Byrnes, Benaron or Reisman said what was to be done with the land Stewart was releasing from his mortgage except that it was to be resold in smaller parcels. (Stewart, 909-910)

In July, 1959, Clejan arranged a meeting with Governor Grant Sawyer of Nevada at which time Clejan said there was some feeling in California that Nevada did not welcome new people and that he would like something to show that Nevada wanted to be progressive and grow. (Sawyer, 1550) Sawyer furnished such a letter (Ex. 2-853K) but was never told it would be used in advertising or promotional material. During September, 1959, Sawyer saw his letter reproduced in a newspaper ad and protested. Thereafter, he met with Clejan and did not authorize use of his letter in advertising or promotional material. (Sawyer, 1550-1551) This latter visit with the Governor occurred during a trip to Nevada in October, 1959, by Clejan and Allen. (Allen, 984) Prior to the trip, Allen and Clejan discussed the Governor's objection to the use of



his letter with Byrnes, Benaron, and Reisman. (Allen, 992) During this conference with the Governor, Clejan and Allen advised Sawyer that his letter would not be used in any future advertising, and this conversation was reported to Benaron, Byrnes, and Reisman upon their return from Nevada. (Allen, 993-994)

The Nevada trip of October, 1959, by Clejan and Allen was also made for the purpose of establishing that the 40 acre parcels being sold on Gamble Ranch were commercial agricultural property not requiring a California Real Estate Commission public report. (Allen, 984-985) Allen discussed this matter beforehand in the Gamble Ranch office with Clejan, Byrnes, Benaron, and Reisman. (Allen, 985) On the trip, Clejan, and Allen were told by agricultural experts that a person farming such a 40-acre parcel would need other employment to supplement his income. They were also told that a study of water resources would be required and that tests of various areas would be necessary. It was also suggested that agricultural field experiments should be conducted. Allen reported these conversations to Byrnes, Benaron, and Reisman. (Allen, 987-990) Stewart had continuous conversations with Reisman and Benaron about the releases of land since October, 1959. (Stewart, 915) None of the lands released from Stewart's mortgage consisted of the improved lands to the northwest of the railroad, and none contained any of the water or agricultural improvements. (Stewart, 910)

Clejan had Allen prepare an application to the California Real Estate Commission for a public report prior to September





1959, and then attempted to withdraw the application. (Allen, 994-995) After this, Allen brought Reisman to the Real Estate Commission on behalf of Clejan. (Block, 7152-7153) Thereafter, on November 6, 1959, there was served upon the Gamble Ranch office, an order (Ex. 1-237) halting land sales until a public report was obtained. (Allen, 995-996) Allen discussed the contents of the order with Byrnes, Benaron and Reisman, including the matter of answering the various contentions and allegations which it contained. (Allen, 998-999, 1010) Paragraph 5 of the order [which is reproduced in full as Appendix A] stated: "It appears that many of the representations and much of the material which you have used or which you propose to use in offering said Nevada land for sale is incomplete, misleading or deceptive and that its use will result in a fraud upon the buyers, investors and the public." (Ex. 1-237; 1001) Allen, Clejan, Byrnes, Benaron, and Reisman discussed this and felt that their selling materials were not deceptive. (Allen, 1001) Paragraph 8 of the Commission's order stated in part:

"Further, the blue sales offering brochure (Ex. 2-19) describes the property as:

' . . . a range land, so abundant, so fertile  
. . . fertile ranch land; valuable ranch land that  
offers you security . . . working ranch land that will  
provide income for you and your family . . . once in  
a lifetime opportunity to invest in ranch land . . . the  
greatest investment value in the United States is now  
yours . . . rolling, rich valleys of verdant range and





meadowland . . . abounding in springs, streams,  
and reservoirs . . . with winters that are generally  
mild and comfortable . . . has the flexibility of modern  
ranching . . . with capabilities and facilities for herd-  
ing, fattening \* \* \*

The abundant water supply on the famous Gamble  
Ranch provides a rich and fertile cropland for alfalfa,  
grain truck farming and orchards \* \* \*

Much of the foregoing representations in the  
blue brochure appears to be blatantly misleading  
and deceptive." (Ex. 1-237, 1002-1003)

Another item of discussion between Allen, Clejan, Byrnes,  
Benaron, and Reisman, was the charge in paragraph 6 of the order  
that a photograph in the brochure was not a picture of the Gamble  
Ranch. All agreed it was not, but said it represented generally the  
land in the area. (Allen 1001-1002) After the Order of November 6,  
1959, Reisman handled a great part of the matter dealing with the  
application for a public report, (Allen, 1000) and the problems  
arising from the Commission's Order. (Clejan, 4536)

In December, 1959, Byrnes, Benaron, and Reisman visited  
Gamble Ranch. (Stewart, 953-954; Allen, 1129-1131) By the end  
of 1959, both Byrnes and Reisman had become officers and directors  
of the company. (Ex. 1-261, p. 20) Reisman was President.  
(Benaron, 12288) On March 24, 1960, Reisman loaned \$10,000 to  
the company. (Ex. 1-261, p. 28) Reisman purchased stock in the



company in June, 1960, (Reisman, 13284-13285) and made additional loans to the company of \$10,000 in June, 1960, and \$5,000 in September, 1960. (Ex. 1-415, p. 28) Despite claims that he was merely attorney for the company, (Reisman, 13154) Reisman never billed the company for any of his services. (Nickels, 13232) Prior to September 28, 1961, Reisman and Byrnes had come to hold identical stock interests in the company, exceeded only by the stock holdings of Benaron. Byrnes had become President as well as director, and Reisman was "Director, Chairman of the Board, and Chief Executive Officer." (Ex. 1-271, pp. 19, 21) In the 2 years from November 1, 1959 to August 31, 1961, the company had gross sales in excess of \$5,858,000. (Ex. 1-261, p. 17) Sales projections for the future showed a fantastic figure of \$81,000,000. (Exs. 1-79, 1-769, 1-829)

B. PROMOTION AND SALES.

1. Advertising

Gamble Ranch land was advertised extensively on television and radio, and by direct mail, newspapers and magazines, as well as at fairs and trade shows. (Ex. 1-261, p. 18) The first advertiser of Gamble Ranch land was John D. Roche who was hired by Clejan in June, 1959. (Roche, 1147) Roche prepared brochures and newspaper advertisements. (Roche, 1158) Roche always submitted his material for approval, and initially this came from Clejan. Byrnes was present with Clejan almost from the beginning



in 1959 and came to some of the advertising meetings. (Roche, 1159-1165) In the spring of 1960, Clejan's activity for Gamble Ranch became almost non-existent. (Allen, 1133) About September, 1960, Reisman and Benaron began to attend meetings for the approval of advertising. These meetings occurred weekly, every two weeks, and sometimes monthly. (Roche, 1159-1167) At Roche's initial meetings with Reisman and Byrnes, he was instructed to submit all advertising to Reisman's office and he did so. He received his proofs from Reisman's office and made the changes indicated. (Roche 1174-1177) Roche produced five different versions of the blue brochure. The first edition (Exs. 2-19, 20) was delivered August 13, 1959; the second edition (Exs. 2-21, 22) was delivered in October, 1959; the third edition (Exs. 2-23, 24) was delivered in December, 1959; the fourth edition (Exs. 2-25, 26) was delivered in February, 1960; and the fifth edition (Exs. 2-27, 28) was delivered in September, 1961. (Roche, 1153, 1157-1158) The first edition was the brochure referred to as deceptive by the Real Estate Commission's Order of November 6, 1959 (Ex. 1-237) and referred to Gamble Ranch as "Rolling-rich valleys of verdant range and meadowland . . . abounding in springs, streams and reservoirs, " "abundant water supply, " "fertile crop-land for alfalfa, grain, truck farming and orchards. " It also contained the Governor's letter.

Production of the first full-color brochure (Ex. 2-128) started in November, 1960, and it was published in February, 1961. (Roche, 1258) The manuscript (Ex. 2-127) for the brochure was



prepared and discussed with Reisman and Ross in Reisman's office and Roche received the manuscript from Reisman's office with the notation "approved with corrections." (Roche, 1253-1254) This brochure contains ten colored pictures, none of which depict the land being sold, and refers to "the city of Montello" on the ranch as "an established community of homes, shops, restaurants, motels, schools (including a major High School)," and as having "all normal shopping facilities." It also refers to the land as "these lush farm lands," and states that "abundance of water irrigation systems provides fertile croplands . . .," and that "industry is being coaxed because of the favorable labor pool existing here." The second full-color brochure (Exs. 2-129, 130) was completed in October, 1961. (Roche, 1157-1158)

The newspaper advertisements prepared by Roche are contained in Exhibit 2-1074. (Roche, 1319-1320) These ads contained references to "fertile crop land," (p. 8) "not desert and rocks but workable land . . . land that will produce," (p. 6) "Good arable land that should be farmed," (p. 21) "abounding with springs, wells, streams, sub-surface water deposits, rain and melting snow . . .," (p. 6) "This abundant water supply on Gamble Ranch provides a rich and fertile crop-land," (p. 6) and "Water is plentiful . . . this precious commodity is in abundant supply." (p. 21) It also contained the Governor's letter.

About July 4, 1960, advertiser Ernest Beatie was hired by Benaron, Byrnes, and Clejan to produce radio and television commercials for Gamble Ranch while Roche was handling the brochures







and newspapers. (Beatie, 1466-1469) He prepared his commercials from materials supplied him, and always submitted his copy to Reisman for approval before using it. (Beatie, 1470-1474, 1483) Advertising meetings at the Gamble Ranch offices were attended by Benaron, Byrnes, and Clejan. (Beatie, 1475) Beatie did not clear his ads with anyone other than Reisman. (Beatie, 1479) Beatie's radio copy (Ex. 2-1) and television copy (Ex. 2-2) were regularly furnished to Byrnes, Benaron, and Reisman. (Beatie, 1487, 1509-1519) Beatie's television ads produced for Gamble Ranch are on film (Exs. 2-1063A, 2-1064A) (Beatie, 1591) In July and August, 1960, Byrnes, Benaron, and Reisman attended advertising meetings at which copy was discussed. (Beatie, 1579-1580) Beatie always received approval for his ads from Reisman, not Burt Ross, (Beatie, 1583) and none of his copy was submitted to the Real Estate Commission. (Beatie, 1668) His services were terminated in late 1961. Beatie's advertising referred to Gamble Ranch land as "Rich fertile valley land," and "here are streams, springs, wells, crystal clear reservoirs and lakes . . . in an area of Nevada that abounds in streams, wells, fertile croplands."

The next advertiser was Joel Douglas who was hired by Byrnes and produced newspaper, radio, and television ads from October 8, 1961 to July 1, 1962. (Douglas, 1689-1691) Douglas' regular procedure was to prepare ad copy from materials supplied him, show the copy to Byrnes, and then submit the copy to Reisman's office. (Douglas, 1691-1694) This is illustrated by Douglas' letter to Reisman (Ex. 2-1021-A) concerning a newspaper ad sent to



Reisman for approval, and copy containing corrections and the initials of Reisman. (Ex. 2-1021-B) (Douglas, 1705) Douglas' advertising material (Exs. 2-31 through 2-43, 2-156, 2-164 and 2-167 through 2-170) (1697-1700) contains such statements as " . . . tremendous industrial and population expansion is now slashing Gamble Ranch into parcels of acreage. . . ." (Ex. 2-39) Douglas never visited the ranch and relied upon the material supplied him for his ads. (Douglas, 1718)

Emery L. Chase handled Gamble Ranch advertising in the San Diego area from May, 1961 through July, 1962, including radio, television and newspaper ads. He prepared all ads from material supplied by the company and never saw the ranch himself. (Chase, 1945-1948, 2066) Chase place no advertising without the approval of the Los Angeles office of Gamble Ranch, and he sent his copy there or to the company attorney and often received it back with corrections or additions. (Chase, 1949) Chase occasionally met with the company principals concerning advertising. (Chase, 1951) Chase met Byrnes on several occasions (Chase, 1998-1999) and also communicated directly with Reisman by telephone, (Chase, 2056) and in writing, (Chase, 2052) concerning advertising copy. (Chase, 2057-2066) An example of this is a letter (Ex. 2-1019) replying to an inquiry of Reisman concerning a Chase ad. (Chase, 1982-1983) Chase's ads (Exs. 2-131, 2-135, 2-136) which show company corrections, contain such statements as "fertile earth" (Ex. 2-136A) "Industry has come here, a town is growing." (Ex. 2-136R) "Gentle winters and comfortable summers." (Ex. 2-136-W)



"The land here is abundant in feed and water. " (Ex. 2-136-Z-8)

"The town of Montello . . . is growing with schools, churches, stores and restaurants. " (Ex. 2-136-Z-10)

Gamble Ranch purchased radio advertising time from Sacramento radio station KRAK beginning in November, 1961, and ads were aired three times a week. (Spaner, 2242-2247) Their advertising was discontinued in February, 1962 for non-payment. (Spaner, 2248) The Gamble Ranch radio scripts (Exs. 2-280, 2-281 and 2-282) refer to Gamble Ranch land as "Rich land, unequalled anywhere . . . land with a richness unexcelled, " "Real rich lush land, " "for a fraction of what you might pay for a desert lot, " "Water comes to the surface and flows through green valleys into several reservoirs, through the many springs existing on the ranch, " and "there is an abundance of water on Gamble Ranch. "

## 2. Sales.

Most of the company's land sales were made under retail installment sales contracts with a down payment followed by a monthly payment including 6% interest on the unpaid balance. The installment payment periods ranged from five to eleven years. Sales were made through salesmen and brokers in the company's main office in Beverly Hills, its branch office in San Diego, and in other cities and states. (Ex. 1-415) At the outset, sales were managed by Gifford and Cagan; (Clejan 1284-1285) but were soon replaced by sales manager Gabbert. (Block, 7055) Gabbert left in 1960 and in the middle of that year Byrnes and Benaron met with





Clejan about hiring Charles Escarzaga as the new sales manager. Clejan objected to hiring Escarzaga because he was too aggressive and high pressure, but he was hired anyway, and some months later, Byrnes told Clejan that the latter had been wrong about Escarzaga and that under Escarzaga's direction, there had been a tremendous increase in sales. (Clejan, 4393-4410)

Escarzaga originally was hired as assistant sales manager in February, 1960, and in August, 1960, was promoted to sales manager which position he held until September, 1961. Weekly sales meetings were held for the approximate 80 salesmen in the main office. At these meetings sales pitch demonstrations were given and Escarzaga orally passed on new information for the salesmen to use. (Escarzaga, 3102-3144) This oral information came to Escarzaga from Byrnes, Benaron, and Rockel, and concerned roads, a gambling casino, tree planting, motel and pool, Sears Roebuck warehouse, and the industry subsidy program. (Escarzaga, 3144-3152) Salesmen were equipped by the company with a full array of sales materials. (Escarzaga, 3107-3109) Byrnes, Benaron and Reisman were in the company offices, and Byrnes attended some of the sales meetings. (Escarzaga, 3132-3136)

On one occasion, a big meeting of potential customers was held at the Beverly Wilshire Hotel and Byrnes, Benaron, and Reisman were present. (Escarzaga, 3158, 3171-3172) Escarzaga gave a sales presentation to the assembled potential buyers and used all of the company sales materials. (Escarzaga, 3159-3164) Escarzaga attended meetings at which advertiser Roche showed his





copy to Byrnes, Benaron, and Reisman, and Reisman would make any necessary changes. Byrnes, Benaron and Reisman also attended similar meeting with advertiser Beatie. (Escarzaga, 3169-3174) Escarzaga knows of no salesman fired for making misrepresentations. (Escarzaga, 3157)

Robert Stein replaced Escarzaga and became the last sales manager. (Stein, 4725) His salesmen had all the materials shown on the sales material roster. (Ex. 2-214) (Stein, 4728-4735) While he was still Escarzaga's assistant, he heard Escarzaga give a sales demonstration in which he said that if California disapproved of the land, Gamble Ranch could not have obtained a public report covering it. (Stein, 4765) On one occasion, Byrnes removed his own name from a Gamble advertisement and inserted Stein's name. (Stein, 4470) Thereafter, the Better Business Bureau complained (Ex. 2-1018) to Byrnes about use in the ad of the word "investment" to describe the land and said that "speculation" was accurate. Byrnes replied (Ex. 2-1018) that use of the word "investment" would be discontinued, but actually subsequent advertising continued to use the word. (Stein, 4771-4778, 4907-4908) Stein discussed complaints of misrepresentation by salesmen with Byrnes, (Stein, 4814-4838) however, to Stein's knowledge Gamble Ranch did not "shop" any of its salesmen to determine if they were making misrepresentations. (Stein, 4800) Although Stein received a memorandum (Ex. 2-853-D) directing that no statements were to be made other than those contained in the public report -- which said that electricity was unavailable and the soil was poor and contained



alkali -- Stein and his salesmen were not prevented from using the film strip (Ex. 2-1059) which states "electricity is here" and refers to the land as "fertile", or the industry subsidy letter (Ex. 2-1035) which says that "electricity is in, ready to be used today, not tomorrow," or any other sales material of the company. (Stein, 4911-4913)

The following is a short history of a few of the many promotional materials furnished to salesmen:

- a. Governor's letter (Ex. 2-853, 854)

In 1959, Clejan informed the Governor of Nevada that he had a prospective group of investors who intended to participate in his Gamble Ranch program and who were going to help him develop the ranch. Clejan said these persons were concerned because they understood Nevada officials were not in favor of the development and wanted to resist growth in the state. Governor Sawyer said that this was not so and that Nevada wanted to encourage economic development. Clejan asked for a letter so stating, which he could show to his investors. (Williams, 1722-1724) Sawyer was never told the letter would be used in advertising or promotional material and he never authorized such a use. (Sawyer, 1550-1551) In September, 1959, Sawyer saw his letter reproduced in a newspaper ad and protested. (Sawyer, 1551) Clejan told Sawyer the letter would not be used in any future advertising material, and Byrnes, Benaron, and Reisman were so advised. (Allen, 991-994)



Thereafter, the letter was removed from newspaper ads and from brochures which were sent through the mail, (Exs. 2-1074; 2-19 through 24) and the letter was instead inserted in the film strip (Ex. 1058) and the sales kit (Ex. 2-213) which the salesmen retained, and was also enlarged and placed in the company office as a poster. (Ex. 2-1078) In July, 1961, when Governor Sawyer learned that his letter was still being used in the promotion he made a written protest to the company. (Exs. 2-1227; 2-854-B; See Appendix H) Sawyer received a reply (Ex. 2-1227) from "Bertram H. Ross for Samuel Reisman" stating that Byrnes, Benaron, and Reisman had no previous knowledge of the Governor's desire that his letter not be used.

b. Nevada Ranch Service letter  
(Ex. 2-845)

In August, 1959, Clejan requested Fred Harris, operator of the Nevada Ranch Service in Elko, Nevada, to furnish a letter concerning the suitability of the Montello area to commercial agriculture. Clejan told Harris the letter was needed to satisfy requirements of the California Real Estate Commission. (Harris, 2142, 2151-2152) On November 6, 1959, the Commission's order halting Gamble Ranch sales called attention to the questionableness of using this letter in Gamble's promotion. (Ex. 1-237) However, use of the letter continued and finally Harris began receiving inquiries from purchasers who had seen it. (Harris, 2153) Harris then wrote Byrnes a letter (Ex. 2-1229) telling him to "cease using my



name and offices in vain in your promotional program, " and stating that in the future, purchasers inquiring of Harris would receive a letter stating that Harris' original letter was intended to apply only to the agricultural lands of the old Gamble Ranch and not to the raw range lands being subdivided where surface irrigation water is non-existent and underground irrigation water is an uncertain quantity. (Harris, 2155-2156) It was only after this that use of the Nevada Ranch Service letter was discontinued. (Harris, 2157)

c.            A & D Machinery Letter  
                 (Ex. 2-1232)

In August, 1959, Clejan obtained from Harold Anderson of the A and D Machinery Co. in Nevada, a letter giving the cost of wells and pipes for domestic water service. (Anderson, 2376-2379) At that time he believed that the land being subdivided was the land under cultivation on the main ranch. (Anderson, 2430) There were no domestic wells southeast of the railroad. (Stewart, 891-892) Anderson never gave anyone permission to use his letter in the Gamble Ranch promotion. (Anderson, 2390) The questionableness of using this letter was called to the company's attention by the Real Estate Commission order of November 6, 1959 (Ex. 1-237), but its use continued.





- d. Victor Gruen sketches and letter  
(Exs. 2-856, 2-859, and 2-860  
through 868).
- 

In September, 1959, Clejan met with employees of Victor Gruen, city planners, and was told the steps involved in preparing a master plan for the ranch. (Genova, 1918-1919) Clejan said he would have to consult with Byrnes before making a decision. (Genova, 1920) The Gruen employees were asked if they would merely prepare sketches and they replied that they didn't do that, and that sketches could be obtained from any artist. (Genova, 1925) In February, 1960, the company signed a contract with Gruen for preliminary planning services. (Hotchkiss, 1793) Gruen's service terminated on April 15, 1960. Prior to that time, Gruen's staff had collected information from the company and had prepared sketches of a proposed town site and commercial center. (Hotchkiss, 1798-1799) These did not constitute a master plan and were merely preliminary plans leading to further study. (Genova, 1927-1928) Gruen did not spend a lot of time on the project and its personnel did not even visit the ranch because Gamble never authorized the expense. (Hotchkiss, 1800, 1908) Even from the preliminary work done, Gruen advised Gamble Ranch that its method of selling 10, 20 or 40 acres was inadvisable because they were too small for farming but too big for efficient development of utilities, roads, and community services, and alternative methods of selling reshaped parcels were suggested. (Hotchkiss, 1800-1801) The company continued to refer to Victor Gruen in its



advertising long after Gruen's services terminated, as is illustrated by a Roche newspaper ad of June 5, 1960, referring to a master plan "which is now underway to further enhance the value of this great investment opportunity." (Ex. 2-1074, p. 38) Enlargements of the Victor Gruen sketches (Ex. 2-1073A-K) were furnished to salesmen to show customers. (Stein, 4734; Escarzaga, 3356-3363) References to the Gruen material continued in the film strip (Ex. 2-1059) right to the end of the promotion despite the fact that Ross warned the company that continued use of such material could imply adoption of the plans. (Ex. 2-856) Actually, Byrnes, Benaron and Reisman acknowledged to persons other than buyers that Gruen's material constituted "preliminary plans" and that Gamble Ranch "has no present plans or means for the execution of the plans prepared by Victor Gruen Associates." (Ex. 10261, p. 11; Exs. 2-1016 and 2-384)

- e. Industry Subsidy Letters and Brochure (Ex. 2-1035; 2-1122 and 2-818 through 821, 824)

Benaron originated the idea for a financial assistance program for industries desiring to locate on the ranch. (Escarzaga, 3152) However, there was no cash available for that purpose. (Rockel, 5341) The job of formulating such a letter was given to Escarzaga, the sales manager, (Ex. 2-1035) and although it was in the form of a letter to industrialists, it was used as a sales tool. (Stein, 4735) The industry subsidy letter was a "sales document"



and Norman Rockel, the company manager, who had the responsibility of attempting to get industry to move to the ranch never saw it. (Rockel, 5342-5343) Burt Ross reviewed the industry subsidy material and wrote a memo dated December 27, 1960, to Reisman with a copy to Byrnes (Ex. 1-700) which stated with regard to the Industry Subsidy material:

"It appears to me that unless Gamble Ranch Development Corporation is financially prepared by its setup and capital structure to do these things that it states it will do in the brochure entitled 'Financial Assistance Program for Industrial Relocation' it is getting mighty close to the line of violating a federal statute commonly designated as the Mail Fraud Law." \* \* \*

In spite of this warning, the material was used -- on purchasers, not industrialists. (Jarrett, 3847) Not a single business ever received the subsidies stated in the brochure or letter. (Ex. 1-261, p. 11; 1-415, p. 14) Purchaser Robert Lytle prepared and submitted plans for his business to be subsidized as indicated in the company materials, but he never received a reply. (Lytle, 7965)

f. Film Strip (Exs. 2-1058; 2-1059)

In February, 1960, not long after Governor Sawyer first complained about the use of his letter in advertising and the



California Real Estate Commission called attention to the deception involved in referring to Gamble land as "rich and fertile cropland," (Ex. 1-237) a representative of Pace Productions met with Gamble Ranch about producing a sales filmstrip. (Ellis, 2070) Ultimately, the Governor's letter and the representations objected to by the Commission which had been removed from newspaper ads and brochures, found their way into the filmstrip. (Ex. 2-1058-A) This came about as follows: In the Spring of 1960, Robert Ellis of Pace Productions met with Clejan and Escarzaga. They gave Ellis printed matter from the Gamble Ranch stockroom and Escarzaga gave a sales pitch using company sales materials. This presentation was taped and from the foregoing materials Ellis made a script which he sent to the company for approval. Ellis then made a "storyboard" showing what pictures would go with the script. Ellis then flew to the ranch and spent several days attempting to get pictures which would match the storyboard. On his return, drawings were made and photographs selected from stock files and all pictures were shown to Gamble personnel including Byrnes, Benaron, and Reisman. Copies of the script were also given to each one and Reisman made several changes. Thereafter, approval of the script and pictures was given. The film strip and sound track were then shown to Byrnes, Clejan and Escarzaga. No changes were made and the film strip (Ex. 2-1058-A) and sound track (Ex. 2-1058) were reproduced in quantity. (Ellis, 2070-2084) When Ellis took the pictures at the ranch, he did not know which portion of it was being sold. (Ellis, 2116) The land south of Montello flattens out into a





plain with sagebrush on it and that is all. (Ellis, 2138) None of the filmstrip pictures are photographs of this flat sagebrush land, except perhaps the last two taken at sunset. (Ex. 2-1058-A) (Ellis, 2088-2102) (the first "film strip" is reproduced as Appendix B of this brief.)

In 1961, almost a year after the first film strip was completed in September, 1960, Escarzaga and Byrnes requested Ellis to remove the Governor's letter from the film strip and add a frame regarding a highway. (Ellis, 2098) The new script was again checked by Reisman (Ex. 2-300) and a new film (Ex. 2-1059-A) and sound track (Ex. 2-1059) were prepared. (Ellis, 2099)

When Reisman was interviewed by Postal Inspectors in July, 1962, he said that he had no part in the preparation of the Pace film strip and heard about it only recently. (Jacobson, 9176) At trial, Reisman claimed he had nothing to do with the first film strip despite the contradictory testimony of Ellis, Clejan (4412) and Escarzaga. (3183-3189)

Each salesman also had a sales kit (Ex. 2-213) containing colored photographs (Ex. 2-267-A-V) and black and white photographs. (Ex. 2-268-A-Z4) (Roche, 1283-1286) The photograph of flat sagebrush land (Ex. 2-267-V) (reproduced in Appendix C of this brief) was not required to be in the sales kit until Stein became sales manager. (Finn, 6774-6775) It was seldom, if ever, shown to purchasers. (See Schedule of Purchaser Witnesses, Appendix D)

The salesmen were trained by the company and were furnished company materials for use in selling. (Jarrett, 3840-3843;



Asin, 6478-6481; Finn, 6766-6771) The salesmen also used information passed on to them orally by the sales manager at the sales meetings, such as that concerning a Sears warehouse, air museum, gambling casino, industry subsidization, roads and surveying. (Jarrett, 3846-3849; Asin, 6482; Finn, 6771) The salesmen claim they did not make representations beyond those furnished by the company. (Jarrett, 3855; Asin, 6487) Virtually all complaints by victim purchasers referred to misrepresentations contained in the sales material. (See Appendix A, B and C, Appellant's Brief) Even "satisfied" purchasers called by the defense admitted that they did not rely upon representations in the company material and that it was the salesmen who had given them the accurate information. (Sekiguchi, 9412-9435; Boylan, 9814-9829)

In addition to materials furnished to salesmen, Gamble Ranch also produced and mailed to each purchaser monthly, a mimeographed newsletter called the Gamble Ranch "Gazette". (Ex. 2-204A) The Gazette was produced in the office by a secretary and contained information received from Byrnes, Rockel or salesmen. Secretary Maria Manzin would type a rough copy and send it to Reisman's office for approval. It would come back with Reisman's approval noted and with whatever changes were to be made. Occasionally, if time were short, she would secure Reisman's approval by telephone. She never mimeographed and mailed the Gazette out without Reisman's approval. (Manzin, 5774-5776) According to the Gazette (September, 1960, p. 1) its entire purpose was to keep purchasers "informed on 'what's happening' on the



## BIG RANCH. "

The Gazette (Ex. 2-204A) contained among many others, the following statements: "Men and Equipment . . . are currently building one hundred and thirty miles of road . . ." " . . . electricity can be brought in from Montello to the new tract. \* \* \* Time required: 60 to 90 days! This electricity will be available to the entire tract! Rate? \$10 per month, base rate!" "the lush property in Section F-25 has been divided into handy 10 acre-size ranches." "Soon to be operating in Montello: the new Montello Lumber Company." (April, 1960) "Victor Gruen & Associates, world famous master planners [are] heading up a plans board to insure the orderly and successful growth of our property." \* \* \* "Gruen's proposals will guide the developers of the new community." (May, 1960) " . . . Ray Blackwell sent out the call that he needed carpenters, cement men, plumbers, electricians . . ." "More Folks Moving Up . . . moving permanently to their ranch on the Gamble." " . . . a well known electronic firm is negotiating to put a plant right on the Gamble property . . . Many other kinds of industry are being contacted for our industrial sites." (June, 1960) "of all our ranch visitors, . . . the general concensus included raves over the beauty of our ranch, and almost all said, 'It is much nicer than we pictured it would be.' " (Sept. 1960) "Hit Big Well at New Motel Site!" "there will be plenty of water for irrigating surrounding acreage . . ." (October, 1960) "After months of careful planning, the Gamble Ranch Development Corporation is now entering into an intensive effort to locate industry and



manufacturing on the world famous Gamble Ranch. " (November-December 1960) "Maybe we'll have a shoe factory on the Gamble some of these days soon . . . " "Mr. Rybold . . . purchased a Ranch, and moved up immediately, lock, stock and barrell. " (March, 1961) "You are buying access to the business opportunities of a proposed city. " (April, 1961) "Negotiations are currently being conducted with several industrial firms with respect to possible location on the Ranch under our Industrial Subsidization Program. " "Isn't It Exciting? All This Activity!!" " 'Dutch is . . . preparing his ground prior to planting alfalfa. " (May, 1961) "Roads and property markings are progressing in accordance with our development program. " "Montello . . . this up-and-coming town. " " . . . these ranches are located in the commercial and industrial area. " "A valley of beauty and not desert sand. " "The grass is so green. " "the fertile valley. " (June, 1961) "Mrs. Ackerman said that she was just thrilled with the property. " "Maybe a television Repair Shop on Gamble . . . ?" (July, 1961) "The town of Montello is . . . installing an improved water system. " (October, 1961) "Now!! Financing For Your Home on Gamble Ranch!!" (December, 1961) "Industry Comes to the Gamble Subdivision. " "The Contract is signed!! Now It Can Be Told!!" "A local, established, clothing manufacturer will shortly move their complete manufacturing facilities to Montello. " (Feb., 1962) "Surveying Continues At Steady Pace. " "Road Blading Follows Survey Party. " "This [picture] is typical of the type of roads that will be made available to all parcels sold on the ranch. " (Jan., 1963)







The salesmen were required by law to furnish a California Division of Real Estate "Public Report" to each purchaser, but Clejan had originally sought to avoid this requirement by claiming that the property was commercial agricultural land for which a report was not needed. (Allen, 984, 985) However, the Real Estate Commission ordered (Ex. 1-237) sales stopped until a public report was obtained. (Allen, 995-996) Thereafter, Reisman and Ross met with Real Estate Commission representative Henry Block for the purpose of attempting to obtain a public report. (Block, 7050-7052) Reisman furnished the necessary documents and Block prepared a draft of the public report and displayed it to Reisman and Ross. (Block, 7052) Reisman objected to the "special notes" section which is the first page of the report and points out in all capital letters that the land is undeveloped and that electricity and other utilities are not available. Reisman objected to the format which made the "special notes" so prominent and thought they should be placed in the narrative section so that they would not be so prominent. However, Reisman contacted sales manager Gabbert to determine if they could sell with such a report and Reisman then advised Block that they could use the report in that form, and the report (Ex. 1-243) was issued. (Block, 7052-7056) The public report was regarded as a hindrance to sales, and Benaron instructed Escarzaga to get the most favorable report he could. (Ex. 1-764) Benaron also urged that a commercial agricultural classification be obtained so that they could discontinue using the public report. (Ex. 2-989; 2-1093) The public report was furnished only when



the law required it, and was not given to non-California residents. (Exs. 2-391; 2-397) Any questions raised in the mind of a purchaser by the public report were to be answered from company sales material. (Escarzaga, 3139) Many purchasers received their copy in the mail after the sale. (See Schedule of Purchaser Witnesses, Appendix D)

### 3. Development.

That the so-called "development program" of the company was merely a promotional gimmick is illustrated by Benaron's memorandum to Reisman, Clejan and Byrnes (Ex. 2-990) which states that there is an "absolute need" to begin a development program to insure that buyers continue their payments.

With regard to the "roads" which the Gazette (Ex. 2-204A) said the company was "building", the fact was that they consisted of a path through the sagebrush made by one pass of a road grader. These "roads" had to be bladed over because there was no way to keep them in repair so they could be used. (Blackwell, 6140-6142; Davidson, 3685) Byrnes caused the men working on the road blading to be instructed to work on Saturdays and Sundays when purchasers would be visiting in order to show progress. (Exs. 56; 2-683; 2-82, 87)

Although the Gazette (Ex. 2-204A) said that the company would survey and stake all parcels, the surveyor hired by Gamble Ranch established only the section corners and quarters in some townships, and never established the boundaries of any individual



parcel of 40 acres or less. He ceased all surveying when the company failed to pay him. (Settlemyer, 5106-5109)

Although the Victor Gruen sketches for a city and shopping center were merely preliminary, and in any event the company had no means for executing such plans (Ex. 1-261, p. 11), Byrnes issued orders for the blading of the "townsite" and shopping center as shown on the Victor Gruen plans. (Exs. 56; 1-45) At trial, Byrnes' only excuse for this action was that by clearing these areas of sagebrush and staking them, people would know that these were places where the company was not going to do anything. (Byrnes, 12785-12786)

With respect to the company's effort to locate industry on the ranch, the only success was a sewing factory which did not receive the subsidies stated in the industry subsidy promotional material. The company had no funds to establish any other facility on the ranch. (Ex. 1-415, p. 14) The "sewing factory" consisted of a building that was originally a garage. Mrs. Sikorski had some sewing machines put in and four or five ladies from Montello worked fairly steady for a while making western shirts. The factory started about June and by Christmas it closed. (Pearson, 4961-4966) Defense Exhibit AN, introduced by defendants as photos of ladies employed at the sewing factory, shows several women at the work tables who never worked there but were asked to sit there and have their pictures taken. (Pearson, 4962-4963; Stancil, 5074-5075)

In December, 1959, water engineer Thomas Stetson met





with Byrnes and shortly afterward spoke with Reisman. Stetson was hired to furnish a water report to be used in securing a public report from the California Real Estate Commission. The report was furnished in January, 1960. (Ex. 2-884) (Stetson, 10001-10002) A second water report (Ex. 2-885) was submitted under date of September 26, 1961, and was used as the basis for statements concerning water made in the company's SEC Registration Statement (Ex. 1-261, p. 4) filed on September 28, 1961. The first water report (Ex. 2-884) states that "there is a paucity of data regarding surface and ground water supplies in this area." (p. 1) It also makes six specific recommendations for comprehensive water investigation, and from well measurements, concludes that "ground water at the present time is within 8 feet of ground surface in at least two locations in the valley area. . . ." (pp. 15-16) The second report (Ex. 2-885) disclosed that the well measurements had been inaccurate and water was at 76 feet rather than 8 feet. (Maxey, 4256) The company had the second report prior to October 9, 1961, when the second full-color brochure (Ex. 2-129) was printed, (Roche, 1157-1159; Stetson, 10612) but the brochure still used the above quote from the first report referring to 8 feet. About the time of the first water report, Reisman informed Benaron and Byrnes of the "lack of reliable ground water data" (Ex. 2-883-N-1) but afterward, all three approved production of the Pace filmstrip (Ex. 2-1058) which stated in part:

"Water is in abundance. Easily drilled wells  
bring in plenty of water. Water in many areas is





just below the surface of the ground."

The same filmstrip also states:

"The consulting engineers, Stetson, Strauss and Dresselhaus, commissioned by Gamble Ranch, reported - The ranch lies in the Utah-Nevada water basin with no river outlet to the sea. All precipitation remains sub-surface, forming a vast lake beneath the land."

This is not true, and Stetson's firm did not make such a report. (Stetson, 10569-10572) Stetson did no water investigation in addition to that for the first report for the Real Estate Commission, and the second report for the SEC, until after sales were halted by the Real Estate Commission in July, 1962. (Stetson, 10581) The company's experience with wells drilled on the property offered for sale was uniformly poor. The Blackwell well drilled at the motel did not produce enough water and by trying to enlarge it the driller made a crooked hole. When test pumped, the well produced water for 15 minutes and then stopped. Almost a year went by without water other than what was hauled in by truck. (Blackwell, 6132-6137) The Stancil well produced only a trickle of water at 150 feet, and even when dug to 350 feet it did not produce enough to irrigate Stancil's land. (Stancil, 5083-5084) Stancil's well was taken over by Brown and dug to 610 feet. (Stancil, 5090; Maxey, 4386) The Patton well was drilled to 631 feet. (Maxey, 4387) No large yield well has ever been developed on the property



south of Montello. (Maxey, 4296) In northern Nevada, very few wells are pumped from depths of more than 100 feet because of the cost. (Maxey, 4386) The Nevelco well, drilled for a group of co-operating Gamble purchasers, was drilled very deep, possibly 800 feet, and did not produce enough water to take a bath. (Fleischmann, 8141) Despite this experience, Bert Ross' letters to purchasers told them (1) the company has been successful in every well drilled (Ex. 3-429), (2) water has been found at various depths for domestic wells (Ex. 3-474); and (3) the farthest the company had to drill for water was 345 feet, and many wells were less than 100 feet deep. (Ex. 3-459)

In January, 1960, Reisman called the Raft River Electric Cooperative manager, Edwin Schlender, and asked what it would take to get electric power out to the locations where people were buying land. Schlender told Reisman that if Gamble Ranch would sign a guaranteed revenue agreement Raft River could build the electrical lines, but no such agreement was signed. By letter of January 22, 1960, (Ex. 2-1248) Schlender advised Reisman that the estimated cost for serving the Gamble Ranch project with power would be \$1,500,000. (Schlender, 5224-5238) Purchaser Stancil learned from Raft River that it would cost him \$10,000 to bring electricity to his parcel. (Stancel, 5089) Despite the foregoing circumstances, the Gazette (Ex. 2-204-A) stated:

" . . . electricity can be brought in from Montello to the new tract. All we need are applications from the new property owners. Time required: 60 to 90



days! THIS ELECTRICITY WILL BE AVAILABLE  
TO THE ENTIRE TRACT! Rate? \$10 per month,  
base rate!"

The industry letter (Ex. 2-819-A) also claimed "electricity  
and power are in, ready to be used today - not tomorrow."

The town of Montello has dwindled in size from about 600  
people in 1941 to the place where from 1959 to 1963 there were  
only about 60 families in a radius of 35 miles around Montello. In  
Montello from 1959 to 1963 there was: (1) A cafe and bar, (2) a bar,  
(3) a general store, (4) a service station-garage, (5) the Post  
Office, (6) the railroad station, and (7) a Standard Oil bulk plant.  
There was no drug store or doctor, no clothing store, barber shop,  
beauty salon, or even a telephone available. The high school was  
closed and children take a bus to Wells, Nevada, a round trip of  
106 miles. (Pearson, 4943-4950) Despite this situation, Reisman,  
Byrnes, and Benaron approved (Roche, 1253-1254) the full-color  
brochure (Ex. 2-128) which states that the "city of Montello" is  
"an established community of homes, shops, restaurants, motels,  
schools, (including a major High School)," and has "all normal  
shopping facilities."

In 1959, agricultural experts at the University of Nevada  
advised Allen and Clejan -- and they in turn informed Byrnes,  
Benaron, and Reisman -- that successful agriculture on Gamble  
Ranch would require soil tests, water studies, and field experiments.  
(Allen, 987-990) The company made no extensive study of soil



conditions. (Ex. 1-415, p. 12) However, Clejan did ask purchaser Davidson to put his parcel under cultivation and said the company would finance the operation. The venture was unsuccessful because a well drilled by the company on nearby property did not produce enough water. (Davidson, 3500-3508) Purchaser Elwood was told that the company would lend him money to finance the farming of his parcel. Elwood met Rockel numerous times at the ranch but never succeeded in getting any funds from the company, and finally talked to Byrnes about a refund which was never given. (Elwood, 2887-2910) Purchaser Stancil tried to farm his land, but the well drilled for him by the company did not produce enough water and the venture failed. (Stancil, 5081-5085) The interest in promotion rather than serious agriculture is readily apparent from Byrnes' request to company manager Rockel to "find out what it would cost us to make a 40 or 80-acre parcel green, not necessarily productive." (Ex. 1-688) As of May 4, 1965, no purchasers had taken up permanent residence on their land, nor had any buildings except the motel been built on Gamble Ranch south of Montello. (Pearson, 4960)

### C. MANAGEMENT AND CONTROL.

By December, 1959, both Byrnes and Reisman had become officers and directors of the company. (Ex. 1-261, p. 20) Reisman was president. (Benaron, 12,288) Byrnes had become a part owner of the ranch in September, 1959, (Ex. 1-261, p. 8) and Reisman became a stockholder in the company in June, 1960. (Reisman,







13284-13285) Reisman and Byrnes held identical stock interests in the company, exceeded only by the holdings of Benaron, and all three described themselves as "parents" in an SEC Registration statement, indicating that they controlled the company. (Ex. 1-261, p. 21; Abrams, 10496)

Advertising was reviewed by Byrnes and Reisman and cleared by Reisman. (Roche, 1174-1177; Beatie, 1470-1478, 1483; Douglas, 1691-1694; Chase, 1998-1999, 2052; Rockel, 5422-5424) Byrnes, Benaron and Reisman also met regularly with the sales managers. (Escarzaga, 3169-3174) Byrnes, Benaron, and Reisman came to the company offices, and Byrnes even attended some of the sales meetings. (Escarzaga, 3132-3136; Rockel, 5380)

Byrnes, Benaron and Reisman supervised and were kept informed of the "development program" for the ranch, (Weller, 3898-3906; Rockel, 5442-5467) and of the company's financial condition. (Carey, 96263) They were also notified of purchaser complaints. (Rockel, 5504-5508; Stein, 4814-4815) Company policy concerning delinquent customers was always cleared with Byrnes, Benaron and Reisman. (Weller, 5894, 5897) After publicity concerning refunds appeared, Byrnes, Benaron and Reisman held a staff meeting to decide how disgruntled buyers and refund requests would be handled. (Weller, 5916-5917)



D.        DECLINE AND FALL.

The technique used by appellants in selling their land was to talk about and picture features in isolated spots to the north of what they said was a 53 mile long ranch (Ex. 2-1058) and to sell desert land at the south. (Ex. 2-267-V) in writing to a bank (not a prospective purchaser), Byrnes stated that the land being sold is the "least desirable" on the ranch. (Ex. 1-169; 1-1085) Byrnes, Benaron, and Reisman told the SEC that "the parcels previously sold, and those presently available for sale are, in many instances, relatively less desirable from the purchaser's point of view than other more easily accessible and fertile tracts which are not presently being offered for sale." (Ex. 1-415, p. 18) By memo of July 20, 1960, to Reisman and Benaron, Clejan opposed a plan to sell the north part of the ranch and keep the south for subdivision purposes, on the ground that if they did not own the north part, "our references to streams, reservoirs, etc. would have to be discontinued." (Ex. 1-1084)

The company was not interested in having people see the ranch before they bought. Maurice Weiss wrote Clejan: "You suggested that I not send any more conditional [on seeing the ranch] sales . . . and I most certainly agree with the suggestion." (Ex. 3-973) When purchasers did visit the ranch they complained. Ranch representative Davidson received complaints from visiting purchasers that the land did not look like the film strip, and he passed these complaints on to Rockel, Clark, or Clejan. (Davidson,



3537-3539) Ranch representative Ray Blackwell notified Benaron by letter of March 3, 1961, that for him at the ranch it was "impossible to counter so many exaggerations" by the salesmen. (Ex. 1-827) On July 7, 1961, Blackwell notified Rockel that they were getting "a lot of unhappy customers" at the ranch. (Ex. 2-718) Byrnes was asked by Maurice Weiss to caution Davidson to refrain from telling purchasers the cost and depth of wells because it "may jeopardize our sales program." (Ex. 2-516)

Byrnes, Benaron, Reisman and Clejan were aware that the Gamble Ranch promotion was under scrutiny of various regulatory or investigative agencies almost from its inception. For example, the Nevada Real Estate Commission was known to have questioned representations made in sales materials prior to September 28, 1959, because on that date the company's sales managers wrote a letter (Ex. 1-984; 1-1018) answering the Commission's inquiry. The attention of the California Real Estate Commission was known to have been attracted to the promotion prior to November 6, 1959, because on that date an order halting sales and calling attention to numerous misrepresentations in a sales brochure was filed. (Ex. 1-237) Subsequently, the company learned that the Better Business Bureau was reporting adversely on the promotion. (Ex. 1-689) In mid-1961, Governor Sawyer complained of the continued use of his letter, accused the company of misrepresentation, and promised an investigation in Nevada. (Ex. 2-853) In October, 1961, advertiser Roche warned Benaron about misleading ads of advertiser Douglas and of state investigating agencies. (Ex. 2-364) During



the same month, it was known that the California Real Estate Commission was contacting Gamble purchasers and that an investigation was in progress. (Exs. 1-218; 2-474)

Reisman, Byrnes and Benaron began to show concern over avoiding trouble with the Real Estate Commissions (Exs. 2-1017; 2-363(P); Ex. FR), and some of the more glaring misrepresentations were removed from radio, television, newspaper and mail matter, and were placed in materials designed for private dissemination. Among the clearest examples of this is the radio and television advertising copy of Chase (Exs. 2-131, 135, 136) from which Reisman struck numerous representations concerning the land, the water and the development. However, Reisman approved the very same representations for inclusion in the film strip which was kept in the possession of the salesman. (Ex. 2-1058, 2-1059)

Also after becoming aware of investigations, Byrnes, Benaron and Reisman produced exculpatory letters and documents stating that the company policy was against misrepresentations and that company materials had been reviewed and found not to be misrepresentative. (Exs. 2-996, 2-997, 2-998, 2-999, 2-306, 1-570) However, Byrnes said that the statement of company policy was desired to show the Real Estate Commission (Carey, 6284-6285), and all of the company materials had not been reviewed as stated. (Rockel, 5426) Byrnes also had a letter sent to attempt to stop the Real Estate Commission investigation. (Ex. 2-186; Carey, 6299-6300) Reisman told Nevada Real Estate Commission Secretary McBride that Gamble had sold over 5 million in contracts and were







collecting half a million a month, that Reisman wouldn't let McBride stop him, and that Reisman would go over McBride, or through him. (McBride, 6804; Malone, 14193)

Complaints or allegations of deception and misrepresentation in Gamble Ranch sales material had been brought to the attention of Byrnes, Benaron, and Reisman on November 6, 1959, by the California Real Estate Commission order. (Ex. 1-237) Even prior to that time purchasers had visited their property and demanded their money back. (Exs. 3-838; 3-1429; 3-1491; 3-875; 3-964; 3-972; 3-711; 3-774; 3-627; 3-1079; 3-1090; 3-1214) Cancellations, complaints and refund demands continued through 1960. (Exs. 3-1231; 3-1262; 3-586; 3-600; 3-620; 3-1129) In July, 1961, Governor Sawyer's letter (Ex. 2-853) accused Gamble Ranch of making misrepresentations to purchasers, and as sales volume increased, the stream of complaints became a torrent. (Exs. 3-805; 834; 850; 862; 880; 887; 1256, 1259; 1335; 1400; 1428; 1447; 1470; 1493; 1502, 1564; 1572; 1586; 1644; 1675) Even the September, 1961, report of Location Analysts, an agency hired to give their recommendations concerning the promotion, advised Byrnes, Benaron, and Reisman that California officials were viewing the Gamble sales campaign with apprehension claiming it is misleading. (Ex. 2-1004)

The complaint procedure was that Rockel would obtain the facts from the purchaser and salesman and would then discuss the matter with and give his recommendation to Byrnes, Benaron, and Reisman who would make the final decision. (Rockel, 5504-5508,



5618) Examples of this policy are to be found in Exhibits 1-543; AZ; and BF. Reisman admitted that he had received complaints including those in Exhibits BF, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI. (Reisman, 13165-13189) In September, 1961, Reisman told secretary Manzin to notify him as complaints came in and thereafter they were referred to him. (Reisman, 13184-13185) Reisman also told Rockel that the moment a complaint was brought to Rockel's attention, Rockel should conduct an investigation. (Reisman, 13190) Sales Manager Stein discussed purchaser complaints of misrepresentation with Byrnes, including those shown in Exhibits 3-397; 3-1612; 3-352. (Stein, 4814-4838)

Attorney Robert McDonald was hired to represent Gamble Ranch before the Nevada Real Estate Commission, and all complaints he received he forwarded to the Gamble Ranch office. (McDonald, 7455) McBride of the Nevada Real Estate Commission furnished about 300 complaints to McDonald after January, 1962. (McBride, 6805) Previously, Byrnes furnished McDonald, for transmission to the Nevada Real Estate Commission, copies of letters from supposedly happy purchasers, but saw to it that the purchasers' names were obliterated. (Ex. 2-1266-J) McDonald was also instructed not to give the Commission secretary, McBride, a list of complaining purchasers who had been denied refunds because it would give McBride "too much ammunition." (Ex. 2-1266-C) Later, Byrnes gave instructions to send complaints to Attorney Finell. (Carey, 6257-6258; Finell, 12599-12602) Still later, Attorney Ross, a friend and associate of Reisman, was



substituted for Finell. (Carey, 6259) These attorneys received all complaints on instructions from Byrnes (Carey, 6388), and drafted letters to complainants, some of which were sent back to the company for signing by an employee, Stanley J. Weiss, who would sometimes sign them with a fictitious name. (S. Weiss, 4666-4667) Ross sent anything requiring care to Byrnes. (Ex. 1-535)

Gamble Ranch had been in trouble with the Nevada Real Estate Commission over use of Governor Sawyer's letter and other complaints in July and August, 1961, and attorney McDonald had been retained to calm things down by writing a letter to the Commission in September, 1961, stating that the company would make refunds to any persons who felt they had not been treated fairly. (Exs. 2-1266; 3-2031A) Byrnes had previously advised McDonald by letter (Ex. 2-1266-J) that buyers who were not satisfied or were unhappy with their purchase would be refunded their money in full and without qualification. (McDonald, 7481) On January 8, 1962, McDonald appeared before the Commission and his letter promising refunds to dissatisfied buyers was read into the record. (Ex. 2-1255; McBride, 6801-6802) The Commission then voted to take no action concerning the company, and a story appeared in the press indicating the company had been cleared following its promise to make refunds to dissatisfied buyers. Byrnes instructed secretary Manzin to reproduce select portions of the minutes (Ex. 1-020, 3-2038) and the news story (Ex. 1-1025) for distribution. However, publicity concerning McDonald's statement to the





Commission resulted in some refund demands by dissatisfied purchasers and Byrnes then claimed that McDonald had been misquoted and that refunds had been promised only where misrepresentations by salesmen were established. (Rockel, 5498-5500) Ross then wrote McDonald asking for a letter stating that he had told the Commission that proof of misrepresentations were a prerequisite for a refund. (Ex. 2-1266-B) Reisman's associate, Herbert Weiser, pointed out that McDonald's letter to the Commission (Ex. 2-1266) did not say misrepresentations would be required (Ex. 1-698), but Ross went ahead and told complaining purchasers that the news story was inaccurate and that it was never the company's policy to give refunds based on dissatisfaction. (Ex. 3-531) Actually, as early as August, 1959, it was company policy to give dissatisfied purchasers their money back. (Allen, 1031-1032; Ex. 3-1391) Later, Byrnes told secretary Manzin that it was company policy to refund money to customers who were not satisfied (Manzin, 5816), and Byrnes' own letter to McDonald states the same policy. (Ex. 2-1266-J) Byrnes also told Carey the same thing (Carey, 6434-6436), and Carey's letter to the Real Estate Commission (Ex. 2-186), written on instructions from Byrnes, repeated the policy. (Carey, 6300) What actually occurred was that after the refund publicity, Byrnes, Benaron and Reisman met and decided how to handle refund requests by disgruntled buyers (Weller, 5917) but they never retracted the promise made on their behalf by McDonald. (McBride, 6801-6803)

Throughout the trial, defense counsel alleged that prior to





the refund publicity of January, 1962, the company had very few cancellations, complaints or refund demands, but following that publicity there was a sharp and substantial increase in these.

(6878-6880; 10776) The defendants produced an accountant, Morris A. Landsman, who testified he prepared certain charts (Exs. CU, CV, CW) from specified records. (Landsman, 9353-9356) Landsman testified that cancellations were \$181,728 in 1960 and \$190,000 in 1961, but climbed to over a million dollars in 1962, as shown by his chart. (Ex. CU) (Landsman, 9363) Landsman also testified that there was a sharp decline in sales after the January, 1962 publicity in contrast to a comparable period in the first half of 1961, as shown by his chart. (Ex. CW) (Landsman, 9367) Landsman further testified that valid contracts had declined from a December 31, 1961 high of over 4 million, to less than 2 million as of April 30, 1965, as shown by his chart (Ex. CV) and that he used these dates at the request of defense counsel to show events before and after the adverse publicity. (Landsman, 9365-9366) Defendants had labelled the charts "before and after publicity" but the Court excised that portion. (Landsman, 10774) The Government later established that Landsman did not obtain his figures from the sources he had testified to (10794-10796; 10807-10814; 10837-10838), and that the charts actually had been prepared by defense counsel. (10835)

The Government also showed that cancellations for 1961 were over one million dollars higher than shown on chart (Exhibit CU) and far exceeded cancellations which occurred after the publicity of January, 1962. (10829-10834) The Government further established



that there was no sharp drop in sales after the January, 1962 publicity, but rather that such a drop occurred in July, 1961, and continued to the end of the year. The defense told Landsman to show only the first 6 months of that year. (10804-10806; Ex. 2-1293)

On July 16, 1962, the Real Estate Commission of California filed an "Order to Desist and Refrain" from further sales of Gamble Ranch land in California. (Ex. 1-1125) This order was accompanied by a document entitled "consent agreement", by which the parties involved waived their right to a hearing to which they were entitled prior to entry of such an order. The sales manager knew nothing about the order in advance of signing it. Byrnes just took him to the Real Estate Commission office and he learned of the order when it was handed him for signing. (Stein, 4848-4851) Byrnes also took Carey to the Commission office at the same time and Carey was made an officer for the specific purpose of signing as "President". (Carey, 6255-6256)

The Order states that the company and all persons named, agree and consent "that each and all of the facts, conditions and circumstances legally required for the exercise by the Commissioner of the powers conferred upon him by Section 11019 of the Business and Professions Code and for the making of the Order hereinafter set forth pursuant to such section exist;" \* \* \*

The accompanying "consent agreement" contains an almost identical provision. (Ex. 1-1125) Section 11019 of the Business and Professions Code provided as follows:



"An order prohibiting the sale and lease, or either, of property in this State may be issued by the commission if the examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in the subdivision."

No other basis for issuance of an order exists under Section 11019. (Ex. 2-1262; 12973) When publicity resulted from the Commission Order and purchasers inquired about it, Ross answered that ". . . you need not be concerned over the recent unfavorable publicity." (Ex. 3-441) Ross also advised inquiring purchasers:

"About a year ago the Real Estate Commission of the State of California and certain legislative committees took a dim view of all out of state real estate subdivisions and conducted hearings which resulted in unfavorable publicity and Gamble got more than its share of attention. \* \* \* The company voluntarily stopped selling its property to residents of the State of California under an agreement made with the Real Estate Commission in July of this year but the Company is presently planning other types of sales programs and is continuing to protect the investment of the contract buyers." (Ex. 3-418)

Ross also wrote another inquiring purchaser:

"At the first of this year, the State of California, through its Real Estate Division, took a stand



against the sale of out of state subdivisions in California, and rather than enter into litigation . . . , Gamble Ranch consented to withdraw its property from sale to California residents. This has in no way affected the continued development of the ranch. . . ." (Ex. 3-435)

However, at trial, Reisman's counsel argued that the Commission Order "trapped" the company so that it could not continue the development. (14533) Ross also stated that "there is not one word in the order issued by the real estate commissioner indicating any wrongdoing or misrepresentation by the company." (Ex. 3-436) Similar letters are to be found in Exhibits 14, 15, 41, 66 and 71.

On August 2, 1962, the California Real Estate Commission filed against the company, an "Accusation" (Ex. 1-1124) charging it and its officers, directors and stockholders, with conspiring to misrepresent Gamble Ranch land in sales to purchasers, and listing numerous representations in sales material which were fraudulent, false and untrue. (6272-6282) When purchasers inquired about the publicity resulting from the Accusation, Ross replied that

" . . . recent press releases have been inaccurate and garbled. The Company withdrew its land for sale to California residents on a voluntary basis and has not at any time been charged with fraud or misrepresentation. . . ." (Ex. 3-521) and that "No charges of fraud or misrepresentation were ever made by the Real Estate Commission." (Ex. 3-488)





Copies of Ross's letters were sent to the company office and were available there to Byrnes, Benaron and Reisman and were also available to Reisman at Ross's office, but they never protested any of the replies Ross sent to purchasers. (Carey, 6220-6228; Ross, 11590-11650)

At trial, the Government called over fifty purchaser witnesses. All of them had been impressed by and relied upon the sales materials shown to them; and upon visiting the ranch they were shocked to see that it did not resemble what had been pictured and described to them. (See Appendix D, Schedule of Purchaser Witnesses)

Also at trial, the Government proved that each representation alleged in paragraph 6 of Count One of the indictment had in fact been made to purchasers, and that each representation was false. It was also proved that material facts were concealed from purchasers as alleged in paragraph 7 of Count One of the Indictment. (See Appendix E)



## IV

### ARGUMENT

A. COMPLAINT LETTERS WERE PROPERLY RECEIVED, AND THE JURY WAS PROPERLY INSTRUCTED WITH REGARD TO THEM.

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With respect to the admission in evidence of purchaser complaint letters, appellant alleges as error that: (1) there was insufficient evidence that appellant had actual, personal knowledge of the complaint letters (Appellant's Brief, p. 19), and (2) the Court improperly instructed the jury concerning the complaint letters (Appellant's Brief, p. 26). The entire foundation upon which appellant bases these claims is Phillips v. United States, 356 F.2d 297 (9th Cir. 1965).

The Certificate attached to Appellant's Brief states that his counsel has read this Court's Rule 18, and that in his opinion the brief is in full compliance with those rules. However, paragraph 2(d) of Rule 18 provides in part:

"When the error alleged is to the charge of the Court, the specification shall set out the part referred to totidem verbis, whether it be in instructions given or instructions refused, together with the grounds of the objections urged at trial."

Appellant complains of an error in instructions, but fails to quote: (1) the instruction given, (2) the objection he made to it at trial, or (3) any instruction he tendered which was refused. The reason for



this omission is obvious. At trial, appellant not only failed to object to the instruction given on complaints (14822-14823); he was the one who requested it [C. T. 826]. Appellants' requested instruction number 52 read as follows:

"Evidence of complaints of dissatisfied buyers of property in the Gamble Ranch has been admitted for a limited purpose only. Such evidence may not be considered by you as establishing the truth of the statements in the letters or by other evidence of complaints. Complaints are evidence only of the fact that complaints were made. Such evidence has no bearing on the question of whether the complaining persons were defrauded. This type of evidence has been admitted for your consideration only in so far as it may relate to the good faith of the defendants. It is not to be considered by you for any other purpose." [C. T. 826]

With minor editing, the Court gave the requested instruction as follows:

"Evidence of complaints of dissatisfied buyers of property in the Gamble Ranch, other than the complaints of purchasers who took the stand and testified, has been admitted for a limited purpose only. Such letter complaints may not be considered by you as establishing the truth of the statements in the letters. Letter complaints from purchasers, other than those



testifying in this case, are evidence only of the fact that complaints were made. Such evidence has no bearing on the question of whether these complaining persons were defrauded. This evidence has been admitted for your consideration only insofar as it may relate to the intent of the defendants." (14822-14823)

This is hardly the same situation as that in Phillips where there was dispute during trial over whether the defendants had actual knowledge of the complaints, defendants requested an instruction on actual knowledge, and "they made timely and adequate objection to the Court's failure to give an instruction such as they had proposed" (356 F.2d 297, 306, fn. 9). It is well-settled that appellant cannot raise as error on appeal, an instruction to which he did not object at trial. Rule 30, Federal Rules of Criminal Procedure; Hartford v. United States, 362 F.2d 63, 64 (9th Cir. 1966); Johnson v. United States, 361 F.2d 447 (9th Cir. 1966); Renteria-Medina v. United States, 346 F.2d 853 (9th Cir. 1965); Chapman v. United States, 346 F.2d 383, 389 (9th Cir. 1965), cert. denied 382 U.S. 909.

The prohibition should be even stronger where the instruction complained of was given at the request of appellant. Sherwin v. United States, 320 F.2d 137, 147 (9th Cir. 1963), cert. denied 375 U.S. 964; Bianchi v. United States, 219 F.2d 182, 194 (8th Cir. 1955), cert. denied 349 U.S. 915.





With regard to his claim that complaint letters were erroneously received in evidence, Appellants' Brief also fails to comply with the requirement of this Court's Rule 18 that "When the error alleged is to the admission or rejection of evidence the specification shall quote the grounds urged at the trial for the objection . . . and refer to the page number in the printed or type-written transcript where the same may be found." Appellee has examined the transcript with regard to the offering and reception of each complaint letter and has found that appellant never objected to a complaint letter on the ground that there was a lack of evidence that Reisman had actual knowledge of the letter, or made anything remotely resembling such an objection. In order to create the impression that such an objection was made, Appellant's Brief (p. 17) quotes the remarks of another defense counsel; but these had nothing to do with complaint letters. (4443) The simple truth is that the defense never once claimed a lack of personal knowledge of the complaints, and for this reason they made no objection to their admission. Objections to evidence not raised at trial cannot be raised for the first time on appeal. Osborne v. United States, 371 F.2d 913 (9th Cir. 1967); Figueroa v. United States, 352 F.2d 589 (9th Cir. 1965); Gilbert v. United States, 307 F.2d 322, 325 (9th Cir. 1962), cert. denied 372 U.S. 969; Olender v. United States, 210 F.2d 795, 800 (9th Cir. 1954); Smith v. United States, 173 F.2d 181 (9th Cir. 1949).

In fact, the evidence that appellants had personal knowledge of complaints is overwhelming and undisputed. On November 6,



1959, Byrnes and Reisman received a Real Estate Commission Order (Ex. 1-237) advising them that their sales material and advertising was misleading, deceptive, or false in numerous specific respects and would result in fraud upon buyers. (Allen, 1001) In July, 1961, appellants received a complaint letter from Governor Sawyer (Ex. 2-1227) which warned them that their materials were untrue and misleading. A Location Analyst's report of September, 1961, advised Byrnes and Reisman that California officials viewed the sales campaign as misleading. (Ex. 2-1004) Rockel was hired as general manager of the company in February, 1961. (5323-5328) The company policy which Rockel followed concerning complaints was that Rockel would interview the complaining customer and the sales person involved and would make an initial determination which he then automatically discussed with Reisman, Benaron and Byrnes. (Rockel, 5504-5508, 5618) Reisman admitted instructing Rockel to interview each complaining purchaser and salesman involved. (Reisman, 13190) Reisman also told Secretary Manzin to notify him of complaints which came in and she did so. (Reisman, 13185) An example of one complaint letter reviewed by Reisman is found in Exhibit 3-1335 (See Appendix G). Reisman also kept in touch with Nevada attorney McDonald who was hired to represent the company before the Nevada Real Estate Commission with regard to purchaser complaints. This is illustrated by the fact that letters to McDonald regarding complaining purchasers are signed "Bert Ross for Samuel Reisman". (Exs. 2-1266-B, 2-1266-C) Byrnes was also advised of purchaser complaints of misrepresentation



(Stein 4814-4815, 4835-4838) and kept in touch with Attorney McDonald about complaining purchasers. (Ex. 2-1266-D; 2-1266-C)

When the refund publicity occurred in January, 1962, Byrnes, Reisman and Benaron met and decided how they would handle complaining purchasers and their refund requests. (Weller, 5917) Byrnes then approached attorney Finell who handled the complaints for two to four weeks to establish a pattern. Thereafter Finell told Byrnes that the company could handle them itself (Finell, 12599-12602), and secretary Manzin handled them under instructions from Byrnes. (Manzin, 5806) Later, Byrnes and Benaron hired attorney Ross to answer complaint letters. (Carey, 6259) That Ross kept Reisman advised of complaints is amply illustrated by the fact that letters relating to complaining purchaser lawsuits against the company were signed by Ross "for Reisman" on Reisman's stationery (Exs. 1-545, 1-578), Ross advised Reisman in writing of refunds made, pending, and denied (Ex. EO), and a Ross letter states that Reisman made an agreement on a refund if a complaint were made. (Ex. 3-2012) Copies of Ross' letters to complaining purchasers were available to Reisman in Ross' office, and were available to Byrnes in the company office. Ross' letters to complainants contained information which he obtained from Byrnes. (Ross, 11650) Obviously, Reisman was aware of the complaints made in 1962, for he testified on his own behalf that after the refund publicity, "the Company received a flood of complaints," which were turned over for handling to Finell and later to Ross.





(Reisman, 13320)

The foregoing brief summary of appellants' actual knowledge of complaints presents a far different situation than that in Phillips v. United States, 356 F.2d 297 (9th Cir. 1965), where this Court noted that "At the trial the Government did not contend that any of the defendants had actual knowledge of any of the letters and requests. . . ." (p. 306) Appellant Reisman appears to be arguing that only complaints which he read should be admissible against him. This is tantamount to a request that this Court create a sanctuary for principals in fraud cases which would permit incrimination of underlings but shield the superiors who supervise and direct them.

Another clear difference between Phillips and this case is that in Phillips, the complaint letters were received solely for the purpose of showing intent to defraud. In this case, the complaints were admissible for several other purposes, and evidence admissible for one purpose is not excludable even if inadmissible for another purpose. United States v. Vandersee, 279 F.2d 176, 180 (3rd Cir. 1960). In addition to their relevance to appellants' intent, the complaint letters were also admissible as the documents in response to which lulling letters were sent. Paragraph 9 of the indictment charged the defendants with causing lulling letters to be sent to purchasers "for the purpose of allaying said purchasers' suspicions and fears that they had been defrauded. . . ." [C.T. 9]. The complaints were offered and received for this purpose also. (6334-6335) Obviously, they were properly so admitted, because





the jury would have no way to tell if a company letter constituted an attempt to "lull" a purchaser without examining the purchaser's letter which prompted the company's reply. In other words, an attempt to lull would be apparent from: (1) a purchaser complaint of misrepresentation as to the availability of water answered by the statement that the company has been successful in every well drilled (Ex. 3-429); or (2) a complaint over unfavorable publicity answered by the statement that the purchaser need not be concerned about it (Ex. 3-483); or (3) complaints over lack of development answered by statements that the company has made "vast improvement" and spent "many hundreds of thousands of dollars". (Exs. 3-457; 3-432; 12)

A further purpose for the admission of the complaints was to rebut the defense contention that virtually all complaints were made after January, 1962 and were prompted by adverse publicity rather than purchaser discovery of misrepresentation. The defense accused the Nevada Real Estate Commission of causing the refund publicity of January, 1962 (6878) and the California Commission of causing later unfavorable publicity. (14026) The defense produced accountant Landsman with charts to depict their contention in graphic form. (9353 ff) Reisman testified that "After the situation arose in January of 1962 when this publicity came about, as a result of Mr. McBrides' efforts . . . the Company received a flood of complaints. It was like a run on the bank." (13320) The defense argued to the jury that every complaint file had been examined and only ten complaints had been made prior to January, 1962.



(14634) Under these circumstances, the complaints were relevant to show when they occurred, and the Government used them in this manner. (14745-14747)

The complaint, cancellation, and refund files of the company contain a large volume of material prepared in response to purchaser indications of dissatisfaction. This material was prepared according to company policy established by appellants and their co-defendants, and carried out under their supervision. The company response varied depending on the type of complaint made. These acts and declarations of the co-conspirators during the course and in furtherance of the conspiracy are attributable to all of them. Phillips v. United States, 356 F.2d 297, 303 (9th Cir. 1965); Pinkerton v. United States, 328 U.S. 640; Carbo v. United States, 314 F.2d 718, 735 (9th Cir. 1963). Upon all of the foregoing grounds, the complaint letters of purchasers were properly received.

Reisman stresses his status as an attorney and appears to hope for a reversal of his conviction because the convictions of attorneys for mail fraud in the sale of land were reversed by this Court in Phillips v. United States, 356 F.2d 297 (9th Cir. 1965), and Windsor v. United States, \_\_\_\_ F.2d \_\_\_\_ (9th Cir. 1967). However, it should be pointed out that in no way was his role in the promotion limited to that of attorney. As was said in Benjamin v. United States, 328 F.2d 854, 863 (2nd Cir. 1964), cert. denied Howard v. United States, 377 U.S. 953, members of appellant's ancient profession should not "be able to escape criminal liability on a plea of ignorance when they have shut their eyes to what was



plainly to be seen. . . ."

B. NO EVIDENCE WAS SUPPRESSED AT TRIAL.

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1. Appellants Were Not Entitled to Witness Questionnaires.

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In pretrial proceedings, the defense requested the questionnaires which the Government had sent to and received from purchasers. (264) The Court declined to order their production because a completed questionnaire was "a statement of the witness." (265) This was undoubtedly correct in view of the following provision of Title 18, United States Code, Section 3500:

"(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case."

The purpose of this statute was to restrict the use of such statements to impeachment of the witness after he testifies on direct examination. Palermo v. United States, 360 U.S. 343 (1959). Statements of a government witness or prospective witness which are not producible under this section are not obtainable at all.





Peek v. United States, 321 F.2d 934 (9th Cir. 1963).

Apparently realizing that he was not entitled to questionnaires of prospective government witnesses under the so-called Jencks Act, appellant claims that they constitute evidence favorable to the accused which the Government suppressed in violation of the principle enunciated in Brady v. Maryland, 373 U.S. 83 (1963). Actually, prior to January 8, 1965, the Gamble Ranch files, including all files of purchasers whose contracts were cancelled, were made fully available to the defense, (217-237) and these files disclose the names and addresses of such purchasers. (Exs. 3-296 through 3-1770) The files of purchasers who were still paying on their contracts were left at the Holly Corporation. (9414-9415) The defense obviously knew this, for they so informed the Court (9414) and obtained such files from Holly without the knowledge of the Government. (9619-9637) These files also showed the names and addresses of purchasers. (Exs. CY; CZ; DA; CX; CT; DP; DQ; DR; DS; DT) Thus, in the above groups of files, appellants had a full list of all purchasers' names and addresses. They could have contacted any or all of them to determine if the purchasers were satisfied or believed they had been defrauded. In fact, a defense investigator did have access to and obtain files from Holly. (9656-9663) In addition, the company had previously hired another private investigator to complete questionnaires on each purchaser, which questionnaires were turned over to defense counsel. (6432-6433) Under these conditions there could have been no suppression of evidence. United States ex rel. Thompson v. Dye, 221 F.2d 763





(3rd Cir. 1955), cert. denied 350 U.S. 875. Appellant's real complaint seems to stem from his inability to find more satisfied buyers. (Appellant's Brief, p. 46) In any event, the Government showed that company materials misrepresented the land even to appellant's "satisfied" buyers, and that these buyers merely did not believe or rely upon the company's representations. (Sekiguchi, 9405-9435; Craig, 9500-9530; Jackson 9691-9692; Rengler, 9746-9749; Froman, 9796A; Boylan, 9814-9829; Currie, 9895-9896; Garrick, 9955-9976; Fearing, 11865; Templeman, 11878-11920) Furthermore, that there were some "satisfied" purchasers would not exculpate appellants since there is no requirement that every purchaser, or any purchaser, be deceived. Lemon v. United States, 278 F.2d 369 (9th Cir. 1960); Blue v. United States, 138 F.2d 351 (6th Cir. 1943).

2. Appellants Were Not Entitled to  
Real Estate Commission Investiga-  
tive Files.

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Some background is necessary to show the context of the defense demand for all files of the California Real Estate Commission concerning Gamble Ranch. During the Government's case, Henry Block, who had been Deputy Real Estate Commissioner in the Los Angeles office during 1959-1962, was called (7038) and testified to the following carefully limited areas: (1) Commission procedures in issuing a public report and Block's contacts with Gamble Ranch in this regard (7039-7060), and (2) that the Commission did not



approve Gamble Ranch advertising and was not shown most of it.  
(7061-7065) Thereafter, on cross-examination, the defense attacked Block for failing to stop Gamble from selling fraudulently, and asked of Block such questions as:

You had authority to stop Gamble sales at any time? (7124)

Why didn't you examine Gamble advertising? (7082)

Why didn't you call for all Gamble brochures? (7120)

Why didn't you investigate the background of Benaron?

(7106)

You could have stopped Gamble sales in January, 1962?

(7123)

When did you begin to investigate Gamble Ranch? (7111)

You withheld facts about your investigation from Reisman?

(7132)

After further, extensive cross-examination, the defense asked for "the investigative records" of the Real Estate Commission and for the first time (7164) mentioned a subpoena (C. T. 907) they had served on the Commission calling for "All files concerning the Gamble Ranch . . . ." (C. T. 908) The Court deferred the matter to a later time. (7168)

Then, the Government called Real Estate Commission Appraiser George Poppe (7202) and carefully limited his testimony to: (1) An inspection trip he made to Gamble Ranch in March, 1962 (7203-7209) and (2) a meeting between Commission personnel and Gamble representatives on June 8, 1962. (7209-7229) During



cross-examination, the defense told the Court that "we are going to be calling upon you to permit us to examine the entire investigation file of the Real Estate Division." (7232)

The Real Estate Commission had moved to quash the subpoena served upon it (C. T. 894) and after this motion was argued (8782-8789), the Court stated "Now, I think the subpoena is too broad and I think, outside of the specific documents, it has to be more specific and there has to be a showing that these documents are of evidentiary nature" (8789), and quashed the subpoena. (8792) The defense immediately served a new subpoena on the Commission. (8792) Appellant has failed to secure inclusion of this subpoena in the record on appeal, but the Court characterized it as "very general" (8922) and as calling for non-evidentiary matter (8792-8793), and Appellant's Brief (pp. 43, 45) still insists he was entitled to all "the investigative files of the Division of Real Estate of the State of California." (Appellant's Brief, p. 43) The Court ordered some records turned over to the defense, but said it was not pursuant to their subpoena. (8921-8922) The Court ordered that the remaining records be marked for identification and sealed pending possible appeal. (8920) This was done. (Exs. 2-1301-A; 2-1301-B, and 2-1301-C)

The subpoena in question was issued under the provisions of Rule 17(c) of the Federal Rules of Criminal Procedure. Rule 17(c) does not permit a carte blanche inspection or "fishing expedition," and is not a discovery provision. It applies only to evidentiary material which would be admissible in evidence at trial. Bowman





Dairy Co. v. United States, 341 U.S. 214, 220-221 (1950); United States v. Maloney, 37 F.R.D. 441 (W.D. Pa. 1965); United States v. Rothman, 179 F. Supp. 935 (W.D. Pa. 1959). After testimony of a Government witness on direct examination, production of records which become evidentiary for the purpose of impeachment is governed by the provisions of 18 U.S.C. 3500. United States v. Maloney, 37 F.R.D. 441 (W.D. Pa. 1965). Statements of persons not called as government witnesses may not be used to impeach and therefore cannot be reached by a subpoena under Rule 17(c). United States v. Echeles, 222 F.2d 144, 152 (7th Cir. 1955).

Appellant now claims that the records he subpoenaed would be material to show: (1) that the Real Estate Commission reviewed Gamble advertising and (2) that there was correlation between the Commission's fraud investigation of Gamble and its issuance of public reports to Gamble, contrary to the testimony of Commission witnesses Block and Poppe. (Appellant's Brief, pp. 62-69) However the contrary testimony of Block and Poppe was elicited on defense cross-examination and relates to collateral issues. Therefore, impeachment by independent evidence is not permissible. McKune v. United States, 296 Fed. 480 (9th Cir. 1924). Furthermore, appellant never limited his request to records usable for such a purpose, but continued to stand on his fatally broad subpoena demanding all investigative files. Nor has appellant ever shown that there is any such evidentiary material in the files. His best attempt is the plaintive assertion that "surely there is something in their files which would have been useful to the defense in cross-





examining them." (Appellant's Brief, p. 69)

Apparently to bolster the claim that the prosecution "suppressed evidence," appellant states that the prosecutor had file cabinets marked "closed" and would not discuss their contents (Appellant's Brief, p. 56), and that the prosecutor stated with regard to boxes of records withheld from the defense: "But the contents you will never know what is in it." (Appellant's Brief, p. 55) Actually, the above quote was made by the Government to the Court in the course of a Government request that a box full of Real Estate Commission files furnished to the defense be individually marked for identification. The context was as follows:

"THE COURT: You say everything marked in the box?

"MR. NISSEN: They have a box full of material that they took from the Real Estate Commission files.

"THE COURT: The box can be marked for identification.

"MR. NISSEN: But the contents, you will never know what is in it.

"THE COURT: They will have to be marked . . . ."

(8922)

Appellant's misleading representation as to what occurred at trial on the above matter demonstrates his unwillingness to have this Court decide his case on the basis of what actually happened, and is typical of many other distortions in his brief.



C.        THERE WAS NO MISCONDUCT BY  
          THE PROSECUTOR.

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The trial transcript makes it clear that, whether as an attempt to intimidate the prosecutor or for some other purpose, appellants and their co-defendants chose to defend themselves by making accusations against the Government. During the testimony of the fourth witness, counsel for Reisman and Benaron accused the prosecution of intimidating and threatening Beatie. (1542-1548) Thereafter, the following occurred:

"THE COURT: What is your position, Mr. Nissen?

"MR. NISSEN: If Mr. Beatie testified on the witness stand that the Government has intimidated him or led him to give testimony that wasn't true or that wasn't fair, it would be proper cross-examination of the defendants to show his testimony for the Government was not accurate. If it does not come out before the jury, it has no relevance whatsoever.

"THE COURT: That is right. You can ask him on cross-examination.

"MR. ROTHMAN: We will be guided accordingly, if your Honor please." (1544)

The good faith of the defendants in making this most serious charge can be judged from the fact that they made no attempt



whatsoever to substantiate it by evidence. Appellant states that "The examples of misconduct by the prosecutor presented here are only a few of the many that took place during the trial." (Appellant's Brief, p. 113) The court may be sure that any instance of genuine misconduct would be fully exploited by appellant on this appeal. The fact that "many" other accusations of misconduct were made but are not urged as error on appeal merely indicates their baseless nature. An example of such accusations is the following which occurred during Government cross-examination of defendant Byrnes:

"Q. Isn't it a fact that the so-called confidential report --

"MR. HUNT: I object to that, 'this so-called'. That is Mr. Nissen's designation of this report.

"THE COURT: Mr. Nissen, refer to what it is.

"MR. NISSEN: I hadn't finished the question.

"MR. HUNT: Your Honor, the first two or three words were enough.

"THE COURT: Just refer to what it is.

"MR. NISSEN: I had not finished the question. I think maybe -- I withdraw the two words 'so-called'.

"THE COURT: Begin over again.

"MR. NISSEN: Let's put it in quotes.

"Q. This 'confidential report to shareholder, ' Mr. Byrnes --

"MR. HUNT: I object to that also, your



Honor please. I think this is misconduct on the part of the prosecutor.

"THE COURT: Is there a title on the document?

"MR. NISSEN: It says, 'Confidential Report to Stockholders. '

"THE COURT: It does say 'Confidential Report?'

"MR. NISSEN: Yes, sir. I am quoting it directly.

"THE COURT: All right. Go ahead. "

(12782-12783)

Also, in attempting to show misconduct, Appellant's Brief (p. 120) states that "the Court twice interrupted the prosecutor during the reading of that particular letter and warned the prosecutor . . . ." Thereafter, appellant purports to quote the two interruptions, but gives only the italicized portion of the following quote and omits the rest:

"THE COURT: I will have to interrupt you,  
Mr. Nissen.

"MR. NISSEN: All right, sir.

"THE COURT: We will take our noon recess now, ladies and gentlemen." (6363)

Thus appellant translates an interruption for a lunch recess into an instance of misconduct.

During a noon recess on June 10, 1965, appellant Reisman told the prosecutor that Reisman was going to have the Bar Association investigate the prosecutor for his "misconduct" at the trial.





(Reisman, 13820)

Defense attacks and accusations against the Government continued through the final argument, in which the prosecutor was referred to as "vicious", "unfair", "despicable", and guilty of "foul play". (14625-14640)

Appellant's characterization of the trial as marked by "numerous acts of the prosecutor's misconduct . . . which . . . deprived appellant of his right to a fair trial" (Appellant's Brief, p. 79) is thoroughly dispelled by even a cursory reading of the trial transcript. The trial judge carefully limited the Government in its evidence and manner of presentation, and gave the defendants the widest latitude in making their defense. Never once did the Court find an instance of misconduct for which to censure the prosecution.

1. The California Real Estate Commission Order to Desist and Refrain Was Properly Received in Evidence.
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It is significant that appellant's attempt to establish that acts of "misconduct" were "numerous" has led him to brand as "misconduct" alleged errors of every kind, including the admission of an exhibit into evidence and the prosecutor's offer and use of the exhibit. (Appellant's Brief, pp. 81-94)

In the fourteen pages appellant devotes to the Real Estate Commission Order, he nowhere finds room to advise this Court of when, where, and under what circumstances the exhibit was



offered and received. This is in spite of Rule 18(2)(d) of this Court which provides:

"When the error alleged is to the admission or rejection of evidence the specification shall quote the grounds urged at the trial for the objection and the full substance of the evidence admitted or rejected, and refer to the page number in the printed or type-written transcript where the same may be found."

The reason for this omission is obvious. When the Order to Desist and Refrain (Ex. 1-1125) was offered and received, the defense made no objection to it whatever. (6267-6272; 6283) In fact, the defense asked the Government to read the Order to the jury (6276) and were willing to stipulate that there was such an order and that they knew of it. (6289-6291) Appellant should not be allowed to raise for the first time on this appeal a matter which he did not object to and thus did not give the trial court an opportunity to rule on. Smith v. United States, 173 F.2d 181 (9th Cir. 1949).

In any event, appellant's argument concerning the Order is entirely fallacious for the following reasons: First, the Order is not an "offer in compromise" or "settlement" as appellant characterizes it. It is an Order to Desist and Refrain. The Order is accompanied by a separate "Consent Agreement" by which the signers waive their right to a hearing and agree that all facts required for entry of the Order exist. That this is so in no way transforms the Order into an "offer in compromise". Second, neither the Order nor the Consent Agreement were offered or



received as an admission of fraud by the defendants as appellant claims. (Appellant's Brief, p. 83) The facts are as follows: The Commission Order was filed on July 16, 1962, and the signers consented "that each and all of the facts, conditions and circumstances legally required for the exercise by the Commissioner of the powers conferred upon him by Section 11019 of the Business and Professions Code and for the making of the Order hereinafter set forth pursuant to such section exist; \* \* \* " (Ex. 1-1125) Section 11019 of the Business and Professions Code furnished the following basis for such an Order:

"An order prohibiting the sale and lease, or either, of property in this State may be issued by the Commissioner if the examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in the subdivision. " (emphasis added; (Ex. 2-1262)

When purchasers inquired about the Order, Ross replied that: "You need not be concerned over the recent unfavorable publicity" (Ex. 3-441), the Order "has in no way affected the continued development of the ranch" (Exs. 14; 3-435), "there is not one word in the order issued by the real estate commissioner indicating any wrongdoing or misrepresentation by the company" (Exs. 15; 3-436), "the Order contains no admission of fraud or wrongdoing." (Ex. 17), and that "the company withdrew its land for sale to California residents on a voluntary basis and has not at any time been charged



with fraud or misrepresentations." (Exs. 39; 66; 3-521)

Paragraph 6K of the Indictment (C. T. 8), charged that the statements quoted above from Exhibits 14, 15, 17, 39 and 66 were false and fraudulent representations, and Paragraph 9 of the Indictment (C. T. 9) charged that defendants caused letters to be sent to purchasers to explain away unfavorable publicity.

The issue raised by the Indictment was whether or not the Order contained "one word . . . indicating any wrongdoing or misrepresentation by the company," or any "admission of fraud or wrongdoing." There was no way for the jury to determine this apart from the Order itself. The Government merely offered the Order as evidence and showed that it was agreed that all grounds required for such an Order existed, and the only grounds were misrepresentation, deceit, or fraud. (Ex. 2-1262) Several weeks later in the trial the defense produced attorneys whose testimony tended to show that the Consent Agreement was not meant to be taken as an admission of fraud. However, the jury was not required to believe the testimony. Taylor v. United States, 320 F.2d 843 (9th Cir. 1963), cert. denied 376 U.S. 916 (1963). If the jury did believe them, the Order could not have harmed defendants in any way. However, Ross's justification of his statement that no admissions of wrongdoing had been made is enlightening:

"A. [ROSS] They technically consented there was jurisdiction to make the order, but there is nothing in the document itself in which they make any admissions.

"Q. In other words, they don't say, 'we







admit to fraud and misrepresentation?'

"A. That is correct. " (11478)

Attorney Finell justified his interpretation of the Order as not constituting an admission of wrongdoing on the basis that the Order relates only to future sales and thus admits nothing with regard to past transactions. (12636)

In argument, the Government carefully limited its remarks concerning the Order to the issue of whether the Ross representations contained in it were false:

" . . . Mr. Ross' letter to a purchaser, mailing Count Fifteen. 'There is not one word in the order issued by the Real Estate Commissioner indicating any wrongdoing or misrepresentation by the company.' All right. The attorneys told you in their opinion there was not. I am not a witness and I will not give you my opinion. Just look at it once and see. " (14381-14382)

In rebuttal argument the Government also said:

"Then they talk an awful lot about this stop order in 1962, and how dare the Government say that was an admission of fraud. Read the indictment and it says they told purchasers it gave them [no] indication of wrongdoing. You use your own judgment whether you think that stop order gives any indication of wrongdoing. " (14780-14781)



Appellant's entire argument about the Order boils down to the legally unsupported contention that the Government should not have been allowed to prove an allegation of misrepresentation contained in the Indictment.

2. Clejan Was Properly Questioned  
and Impeached.

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Arnold Clejan, a defendant who had already been convicted and sentenced (C. T. 657), was called as a Government witness and immediately showed his reluctance to testify. (4393-4397) At a bench conference, the Government then advised the Court that the prosecutor had previously interviewed Clejan at which time Clejan told of a warning he gave Byrnes and Benaron against hiring Escarzaga -- a matter which Clejan now claimed he could not recall. With regard to other conversations with Clejan, the prosecutor informed the Court:

" . . . on the second meeting he said to me, 'Look, I have got nothing against these people and I don't want to hurt them.' I told him, 'I don't care what you want, you tell the truth.' His attorney called me thereafter -- \* \* \* Mr. Schwartz said to me in effect, 'Mr. Nissen, I don't know if you are aware of it but Mr. Clejan is personally hostile to you.' I said, 'Why?' He said, 'Because of the statements that you made at the time he was sentenced. He



says he will not testify as he told you in the office

because he is hostile to you. ' ' (4399-4400)

Thereafter, the Government asked permission to treat Clejan as an adverse witness and proceed by leading questions. (4400)

Appellants' counsel objected and in keeping with his standard practice, made an accusation that the Government's statement to Clejan quoted above "is in the nature of a veiled threat to the witness by the Government. . . ." (4402) Appellant's objection was overruled (4403) and the Government proceeded by leading questions strictly limited to two events: (1) Clejan's warning to Byrnes and Benaron against hiring Escarzaga (4403-4410), and (2) Governor Sawyer's protest of the use of his letter in October, 1959, and Clejan's conversation with Benaron, Byrnes, and Reisman shortly afterward. (4410-4414) The Government then told the Court that "for the reason explained, your Honor, up at the bench, I am going to discontinue questioning and I am going to just identify some documents. " (4414)

During "cross-examination" of Clejan who was friendly (4513-4514) to them, the defense, over Government objection (4452-4461) went into the whole history of Clejan's involvement with the ranch. (4452-4554) In the course of this Clejan testified by leading questions that he never told Benaron and Byrnes that the Governor forbade the use of his letter, but only that it could not be reproduced in brochures in the future. (4487) Clejan was also led to testify that the Ranch Land company in Chicago bought a block of land and resold it in Chicago as an independent broker, not as an agent of



Gamble Ranch. (4491-4495) In an apparent effort to convince the jury that Clejan was a friend of the Government and an enemy of the defendants, the defense implied that a Government car had been made available to chauffeur him (4499) and told the jury that the Government had improperly attempted to limit defense cross-examination of Clejan. (4501) The defense also elicited the fact that Clejan was suing Reisman (4495), and accused Clejan of concealing from defendants the fact that he had "been denied a discharge in bankruptcy because of fraud." (4519)

Before beginning "re-direct" examination of the hostile Clejan, the Government told the Court at the bench that "with respect to Clejan's testimony on cross-examination the Government is claiming surprise with respect to two points. . . ." which were (1) that the Governor did not demand discontinuance of his letter and Clejan never so advised the defendants, and (2) the Ranch Land Company bought the land and resold it themselves. (4455-4456) The Government said it intended to impeach Clejan on these matters. (4557)

On re-direct examination, Clejan denied telling postal inspector Jacobson that the Governor had told him not to use his letter further in the promotion, and that Clejan had so advised the defendants. (4566-4571) Clejan did admit that Ranch Land Company never paid Gamble Ranch until after Ranch Land had sold it to someone. (4573)

The Court then allowed the Government to ask Clejan if he had told his attorney to advise the prosecution that Clejan was





hostile to the prosecutor on the ground that it was for the purpose of impeaching Clejan by showing bias against the Government. (4575-4576) Subsequently, the Government attempted to impeach Clejan by asking: "And have you been convicted of a felony, sir?" (4579), the question of which appellant now complains, and which appellant misquotes as "and you have been convicted of a felony, sir?" (Appellant's Brief, p. 96)

The defense objected to the question (4579), it was never answered (4585), and the Court instructed the jury to disregard and draw no inference from it. (4590) The Government claimed the right to impeach Clejan regarding his statement about the Governor's letter which exculpated the defendants, and pointed out that there were approximately a dozen methods of impeaching witnesses, including: (1) prior inconsistent statements - which the Government had not yet proved; (2) bias or hostility, and (3) conviction of a felony. (4584) After written points and authorities were filed, the Court decided not to allow the question on the ground that the answer would be of small benefit to the Government. (9473-9474) Prior inconsistent statements of Clejan were proved, however (4615-4618), and appellant now makes no claim that this was error.

It is noteworthy that appellant does not claim that Clejan was not subject to impeachment, but complains only of the means used by the Government. Obviously, Clejan's testimony about the Governor's letter which exculpated the defendants and was directly contrary to testimony of witness Allen (993-994), established the required surprise and prejudice under this Court's decision in



Bushaw v. United States, 353 F.2d 477 (9th Cir. 1965), to entitle the Government to impeach him. Once impeachment becomes appropriate, it can be accomplished by any recognized method, including proof of a felony conviction. United States v. Vasquez, 319 F.2d 381, 386 (3rd Cir. 1963); Meeks v. United States, 179 F.2d 319 (9th Cir. 1950).

Appellant asserts that the prosecutor's question made sure "that the jury knew that Clejan had been convicted" as a co-defendant in the same case. (Appellant's Brief, p. 100) The question itself implies nothing of the sort, and the defense obviously recognized this because during discussion over it, a defense counsel informed the Court that he would not question Clejan about his indictment if that would open the door for the Government to inquire about his conviction. (4586-4589) Even if the contrary were true, there is no inherent prejudice in the jury being told of the conviction of co-defendants. Davenport v. United States, 260 F.2d 591 (9th Cir. 1958) (mail fraud); Wood v. United States, 279 F.2d 359 (8th Cir. 1960) (mail fraud).

Appellant accuses the prosecutor of choosing "a devious method for disclosing Clejan's conviction to the jury." (Appellant's Brief, p. 101) Actually, the Government could have properly disclosed Clejan's conviction on his direct examination. United States v. Jannsen, 339 F.2d 916, 919 (7th Cir. 1964); United States v. Freeman, 302 F.2d 347 (2nd Cir. 1962); United States v. Murray, 297 F.2d 812 (2nd Cir. 1962); United States v. Aronson, 319 F.2d 48, 51 (2nd Cir. 1963). In addition, the prosecution could



have introduced extensive evidence of the convictions of all co-defendants. This came about because the defense introduced a chart (Ex. CV) which purported to show that valid Gamble Ranch contracts declined from a high of \$4,281,286.00 on December 31, 1961, prior to adverse publicity, to a low of \$1,185,000.00 on April 30, 1965, after unfavorable publicity. (Landsman, 10766-10774) Defense counsel claimed that the publicity to which the chart referred was the refund publicity of January, 1962 (10777) and the cease and desist order of July, 1962. (10779-10780) Without any prompting from anyone, the Government voluntarily informed the defense that because the chart showed the decline of contracts from publicity through April, 1965, the Government would be entitled to show that there was adverse publicity which contributed to the contract decline after that of 1962, including that occurring when the co-defendants were convicted and sentenced. (10774-10780) The Government made no objection when, after this warning, the defense withdrew the chart, and the prosecution did not seek to show the later publicity (10789-B to 10790), even though, as the Court told the defense: "You have it in evidence this was before and after publicity. You were very careful to get that in and you are relying on it. That is the only reason you made those charts, isn't it -- . . . is to argue that it was this adverse publicity in '62 that caused this." (10787) Appellant's claim that the prosecution was determined to strike an "intentional foul blow" (Appellant's Brief, p. 101) by disclosing Clejan's conviction is hardly credible in view of the fact that the Government had the opportunity to



disclose the convictions of all the co-defendants but in deference to the defense voluntarily relinquished that opportunity.

3. Government Cross-Examination of  
Witness Roche Was Proper.

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Advertiser John Roche was called as a defense witness and testified that a blue brochure (Ex. 2-121) was reviewed by attorney Albert Allen (14,238), rather than by Reisman as indicated by the Government's witnesses.

On cross-examination, the Government asked Roche:

"Sir, some of your advertising has previously been involved in mail fraud cases, has it not?" (14,242)

Appellant now claims that "the prosecutor insinuated, contrary to fact, that the witness had been guilty of mail fraud" (Appellant's Brief, p. 102) and that the jury "could believe that . . . Roche had been a defendant or even been convicted." (Appellant's Brief, p. 106) No such insinuation was ever made and there is no basis for such a claim apart from appellant's fertile imagination.

4. Cross-Examination of Appellant  
Reisman Was Proper.

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The Government never accused appellant of tampering with evidence and appellant's assertion to the contrary is outright







distortion, as a reading of the transcript shows. (13713-13720) Reisman was belligerent and evasive and the questions asked were necessary to obtain an answer. When the defense claimed that the Government intended to infer that Reisman must have removed something from the file, the Court who heard the matter impartially, said: "I didn't get that inference", (13720) and even counsel for a co-defendant said he didn't know if counsel intended to infer that or not. (13719) Outside the presence of the jury, the Government did inform the Court that someone other than the prosecution had removed a letter from another file. (13792-13793)

The Government pointed out to the jury several false statements made by Reisman, but never accused him of perjury in the instance of which appellant complains. The record itself adequately refutes his contention. (13394-13396)

The Government did not bring incompetent evidence before the jury. Appellant claims that, by advising the Court that a picture about which Reisman was being questioned came from a company sales kit in evidence, the prosecution was attacking Reisman as to conduct not resulting in a felony conviction and attempting to convict him of being a no good dissolute person. The trial proceedings refute this ridiculous claim. (13597-13598) This is another excellent illustration of how far appellant must go in attempting to establish his claim of "numerous" acts of misconduct.



5. The Prosecution Accused No One  
of Tampering With Evidence.

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Appellant is very careful not to quote from the record concerning what was said about the admissibility of records from the Holly Corporation. The account given in Appellant's Brief (pp. 113-119) bears no resemblance whatever to which actually transpired. In the course of questioning a defense purchaser witness by appellant's counsel, the following occurred:

"Q. MR. HUNT: I have another file. I will ask you if you recognize this paper in this file as a copy of the Agreement of Purchase that you signed?

"A. As far as I can tell it is.

"Q. And also if you recognize this as the deposit receipt you signed?

"A. Yes.

"Q. I ask you if you recognize this as a copy of the Public Report and if your signature appears on the Public Report?

"A. It does. \* \* \*

"MR. HUNT: I would offer this file, your Honor, as the exhibit next in order. \* \* \*  
(Ex. CY)

"MR. NISSEN: There is no foundation for that whatsoever. The witness says he recognized his signature on three documents.



"THE COURT: What file is this? Is this a Gamble Ranch file?

"MR. HUNT: This is a file obtained pursuant to subpoena from the Holly Corporation, your Honor.

"MR. NISSEN: There is not a shred of evidence of that fact in the record, your Honor, not one."

(9394-9395)

The Government then established on voire dire examination of the witness that he had no idea where the documents came from and that they were not in the same condition as when he signed them. (9395-9397) Thereafter, the following occurred:

"MR. NISSEN: All we are asking is that counsel authenticate the file so we will know where it comes from.

"MR. HUNT: Well, your Honor, I am amazed, but I am sure there is only one thing that I can gather from the questions of Mr. Nissen or the remarks about it, and that is, he doesn't believe we are submitting authentic evidence." (9400)

The Court allowed the defense to introduce the documents contrary to the requirement that they must first be authenticated as to where they come from by the custodian. (9400) Lipscomb v. United States, 33 F.2d 33 (8th Cir. 1929).

The Government said:



" . . . we would just like to have somebody come over and state 'These files are in the same condition they were when we turned them over.' I think we are entitled to that",

and the defense promised to do so the next trial day (Tuesday).

The Court said to the defense:

"You had better have him in Tuesday so we won't have any problem, and then it is cleared up." (9415)

The next trial day, the defense produced Holly employee James F. Ragan who testified that he had been custodian of certain Gamble Ranch files until a few days earlier. (9619) Ragan also said that the files now contained ledger sheets which were kept separately when they were in his custody. (9620) Ragan stated that the Grand Jury foreman had instructed him not to release any records without first consulting the Postal Inspector or the United States Attorney. (9634) Ragan recalled that Gamble ledgers called for by a Government subpoena could not be found, but he did not know how they came into the defendants' possession. (9634-9636) With regard to the Gamble Ranch files, Ragan said they were turned over to a defense process server by Ragan's subordinate by mistake and should have been produced in court instead. (9636-9637) The Government then showed Ragan the files in question and asked.

"Q. . . . In other words, before these were turned over, the files, you did not inventory them to





see what correspondence was in them?

"A. I personally did not. \* \* \*

"Q. . . . By looking at the file you can recognize things that are usually in your files, but you cannot state, can you sir, that there is something removed, for instance, a letter from a purchaser?

"A. No, I can't say that." (9638)

A short time later, defense counsel Rothman addressed the Court in front of the jury as follows:

"MR. ROTHMAN: Your Honor please, I want the record to reflect something which I don't think Mr. Hunt has the temperament to talk about. But there sits a gentleman who has the highest honors that the State Bar can bestow upon him. He is a member of the Board of Governors of the State Bar, and here an attorney is suggesting that we have tampered with those documents, and I resent it.

"MR. NISSEN: Counsel may resent it. Nothing at all was said by the Government. We know Mr. Hunt and Mr. Rothman do not tamper with files.

"We don't know what happened to them when they were let loose against the Grand Jury orders to a process server without any explanation, and the next thing we know they are showing up in court. We



would like to know.

\* \* \*

"THE COURT: They are entitled to know what happened to records, if they were turned over to a process server and the link. Then you will have to connect that link. (9650)

\* \* \*

"I don't think Mr. Nissen -- he has said and I am sure he is not inferring in any way any counsel here took anything out of those files. But he is still entitled to have the files brought down to date, their custody and whether or not there were any changes made in them. We all know that. That is just . . . routine foundational proof." (9650)

The foregoing is the basis upon which Appellant bases his charge that "the prosecutor insinuated without basis in the record that appellant, his counsel or counsel's investigator tampered with evidence." (Appellant's Brief, p. 113) It is obvious that appellant's outrage stems not from any accusation that he tampered with evidence, but from the fact that the rules of evidence were applied to him and his honored counsel as well as to the Government. Even in argument to the jury, the defense accused the Government of questioning the integrity of counsel Hunt, a member of the Board of Governors of the State Bar, as a result of the above episode. (14565) This is merely another illustration of the defense tactic of



constantly attacking the prosecution.

6. The Prosecution Did Not Attempt  
to Incite Passion or Prejudice in  
the Jury.

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Appellant claims that "large portions of the complaint letters . . . should have been excised," and that "irrelevant matter was paraded before the jury -- and in an artful manner," to produce the desired effect of inciting in the jury, passion and prejudice against appellant and sympathy for the victims. (Appellant's Brief, p. 120)

The first quotation relied on by appellant is from Exhibit 3-459, from which appellant quotes only the italicized portion of the paragraph below:

"We bought this ranch so we could live there  
when we retire in two years. We were told by the  
agent who sold us the land that there would be a  
shopping center and now according to the clippings  
we have from the newspaper we feel that we were  
misled." (6357)

How the reading of that letter would incite passion, prejudice, or sympathy, appellant does not explain.

The only other quotation complained of by appellant was read from Exhibit 3-488 (See Appendix F). The reading of that letter occurred as follows:



"MR. NISSEN: . . . This file contains a handwritten letter from the Loswicks dated July 18, 1962, a photocopy, your Honor, of a letter, with the typing on the top, 'ORIGINAL LETTER SENT TO BERT ROSS'. Perhaps I can read a portion of Mr. Loswick's letter:

'Dear Mr. Wise:

According to news reports from the California Real Estate Commissioner, Mr. Wynne A. Savage, my longstanding fears of your company's misrepresentation, and outright fraud, has been well founded. On advice of my attorney I hereby serve notice that I will institute court proceedings against your firm, not only to recover every cent my wife and I have paid you on this worthless land, but also include a damage suit also, if your company do not forthwith return all the moneys paid you. That you and your company could do this to two old persons like myself and my wife, who last year lost our only son," and so forth.

"THE COURT: Those portions are not material, Mr. Nissen.

"MR. NISSEN: I started to read a sentence, and I have been criticized for not reading full sentences.

"THE COURT: Anything further on that letter?

"MR. NISSEN: Yes, sir.

'We went into this buy on the strength of our





confidence and faith in Mr. Rosenberg, but I can see now that you all are a bunch of schemers and unfaithful to words and promises. '

"THE COURT: I will have to interrupt you, Mr. Nissen.

"MR. NISSEN: All right, sir.

"THE COURT: We will take our noon recess now, ladies and gentlemen. " (6362-6363)

The defense later complained about the Government having read portions of the above letter and the Court said "Don't read those things, Mr. Nissen. " (6366-6367) The prosecutor explained that he was deciphering the writing as he was going along and when he realized what he was reading he stopped. (6367)

The record shows that the letter was handwritten and in addition a photocopy (6362) which was difficult to read. (6367) The record also discloses that the prosecutor stopped reading the non-pertinent material before any comment was made by the Court. (6363)

Appellant's accusation that the prosecutor "deliberately disregarded the court's instruction" not to read such matter is simply false. (Appellant's Brief, p. 120; 6371) One interruption of the prosecutor while reading the letter was for a lunch recess rather than for "misconduct" as Appellant alleges. (Appellant's Brief, p. 120)

Nowhere does appellant establish that the Government tried



to incite passion, prejudice or sympathy. The cases he cites have no relevance to what occurred at his trial.

7. The Prosecution Made No Claim  
That All Out-of-State Land Subdivi-  
sions Are Fraudulent.

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As appellant states, appraiser Trescartes testified that Gamble land was worth far less than what it sold for. The defense then elicited that there were other desert subdivisions in Nevada selling at even higher prices. (6706-6757) The questions asked of Trescartes concerning these other subdivisions of which appellant now complains, merely sought to determine whether the buyers of those properties were well-informed, or whether they had been deceived. How this can be interpreted as insinuating that all out-of-state subdivisions are fraudulent appellant does not explain.

Appellant also complains of an incident in which Reisman was cross-examined about a letter (Ex. 3-2082) which Rockel sent to Reisman with an attached newspaper article about out-of-state land development, in accordance with what Reisman described as Rockel's general policy with any article of this type. (13805-13810, 13812) After reading the article (13807-13810) the Government asked Reisman: "I ask you, did you regard that the company you were involved with, Gamble Ranch, was using people's dreams of retirement and security to get them to pay money on property that was like this, covered with sagebrush and so forth?" To which Reisman replied: "Absolutely not." (13810) On direct



examination of Reisman by his counsel the following had occurred:

"Q. Mr. Reisman, at any time during the period under discussion have you ever had any belief or intention of any kind or character that you were engaged in any sort of fraudulent practice?

"A. Absolutely not. Just [such] a thing could never enter my mind." (13332)

The obvious purpose of the prosecutor's question was to test the credibility of Reisman's "good faith" defense by inquiring if upon reading the article he did not realize that he might be engaged in a promotion which was deceiving purchasers. All of appellant's ranting about innuendo cannot change a proper interrogation into an attempt to insinuate that all out-of-state subdivisions are fraudulent. The cases he cites in support of his argument have no relevance to what occurred at his trial.

Although appellant devotes 58 pages of his brief to his claim of "pronounced and persistent misconduct by the prosecutor," he fails to show any genuine instance of misconduct. A reading of the transcript refutes every one of his charges, which appear to be merely a continuation of the defense trial tactic of unfounded accusation.



D. REISMAN WAS ASSOCIATED WITH  
THE SCHEME AT THE TIME OF ALL  
MAILING COUNTS ON WHICH HE WAS  
CONVICTED.

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Appellant states that "his role up to mid-1960 was simply that of attorney acting in an advisory capacity, and, as is done by many attorneys, accepting a position as an officer and director." (Appellant's Brief, p. 141) He conveniently ignores the rule that on appeal, the evidence is to be viewed in the light most favorable to the Government, Kaplan v. United States, 329 F.2d 561 (9th Cir. 1964), and bases his contention on the testimony of Reisman which was refuted by other evidence.

Despite Reisman's claim that he was merely an attorney for the company, Reisman never billed the company for any of his services (Nickels, 13232) and the company never paid him for them. (Rockel, 5741) The date Reisman became a shareholder (June, 1960) does not reflect the date he joined in the scheme. This is shown by the fact that he loaned the company \$10,000 in March, 1960 (Ex. 1-261, p. 28) and by the many company activities he participated in before June, 1960. For example, in September, 1959, Byrnes, Benaron and Reisman negotiated the release of some of the land from Stewart's mortgage, and said it would be resold in smaller parcels. (Stewart, 908-910) In October, 1959, Reisman was advised of the need for studies, tests, and experiments before the land's suitability for agriculture could be determined. (Allen, 987-990) At the same time, Reisman was informed of Governor





Sawyer's objection to use of his letter, and of Clejan's promise not to use it further. (Allen, 993-994) Reisman contacted the Real Estate Commission on behalf of Gamble Ranch prior to November 6, 1959, (Block, 7152-7153) and on that date Reisman, Byrnes and Benaron met and discussed the Commission's "stop order" and allegations of misrepresentation. (Allen, 998-999, 1010) Reisman thereafter handled most of the problems arising from the order. (Clejan, 4536; Allen, 1000) Reisman objected to the prominence of unfavorable items in the required public report, but withdrew his objection on the assurance of the sales manager that such a report would not interfere with sales. (Block, 7052-7056) By the end of December, 1959, Byrnes and Reisman had become officers and directors of the company. (Ex. 1-261, p. 20) Reisman was president. (Benaron, 12288) In December, 1959, Byrnes, Benaron and Reisman visited the Gamble Ranch (Stewart, 953-954; Allen, 1129-1131), and they did so again in July, 1960. (Blackwell, 6129) Reisman also conferred with water engineer Stetson in December, 1959. (Stetson, 10001-10002) In January, 1960, Reisman contacted Raft River and asked what it would take to get electric power to the locations where people were buying land. (Schlender, 5224-5238) Reisman's later participation in the scheme is briefly covered in the Statement of Facts.

Appellant's contention that his resignation as officer and director must be taken as the date on which he withdrew from the scheme (Appellant's Brief, p. 141), is hardly persuasive in view of evidence that Byrnes, Benaron and Reisman all resigned because



of the Real Estate Commission investigation (S. Weiss, 4683), and that the naming of company employees as officers to replace them was merely a formality. (Carey, 6256) Reisman's resignation was hardly the type of affirmative conduct showing withdrawal from a criminal conspiracy which the law requires. Hyde v. United States, 225 U.S. 347 (1912); Baldwin v. United States, 72 F.2d 810, 814 (9th Cir. 1934), cert. denied 295 U.S. 761.

Even if Reisman's claim that he was improperly convicted on counts before June, 1960 and after June 15, 1962, were correct, he would be entitled to no relief on appeal. His sentence of imprisonment (which was suspended) was imposed on all counts to run concurrently, and the law is well-settled that under those conditions a valid conviction on any count will sustain that portion of the sentence. Abrams v. United States, 250 U.S. 616, 619; 279 U.S. 263; Ybarra v. United States, 330 F.2d 44 (9th Cir. 1964); Stein v. United States, 263 F.2d 579 (9th Cir. 1959).

With regard to the remaining portion of the sentence, Reisman was fined \$800 on each of thirty-eight counts totaling \$30,400. No fine was imposed on any count involving mailings after June 15, 1962. He was fined on only five counts involving mailings prior to June, 1960 (Cts. 58-60, 67), the earliest of which was April 1, 1960 (Ct. 58). Even if Reisman's conviction on these five counts were improper, he would still stand convicted on the 33 remaining counts on which he was fined. The total fine imposable on these 33 counts is \$33,000 and Reisman's



total fine was only \$30,400. Where the total fine imposed does not exceed that which could have been imposed on counts upon which conviction was valid, errors with respect to other counts are not grounds for reversal. United States v. Monarch Distributing Co., 116 F.2d 11 (7th Cir. 1940), cert. denied 312 U.S. 695.

E. APPELLANT WAS NOT ENTITLED TO  
PRE-TRIAL DISCOVERY OF THE GRAND  
JURY TRANSCRIPT.

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Long before trial, Appellant moved for "an order permitting him to inspect the minutes of the Grand Jury . . . insofar as they relate to the proceedings resulting in the return of the indictment herein" on the ground that he needed them "to properly prepare his defense." (C. T. 246] This motion was denied. [R. T. 141]

The Court's refusal to give the transcripts to the defense prior to trial was obviously correct. Rule 6(e), Federal Rules of Criminal Procedure, cloaks the transcript with secrecy. Even after a government witness has testified at trial, his grand jury testimony is not producible without a showing of "particularized need," Dennis v. United States, 384 U.S. 855 (1966); Osborne v. United States, 371 F.2d 913 (9th Cir. 1967), except in a few jurisdictions. United States v. Youngblood, 379 F.2d 365 (2nd Cir. 1967). Appellant did not request any Grand Jury transcript after a witness had testified, much less show a particularized need for it.

Appellant cites no pertinent case to support his alleged right to pre-trial inspection of the entire Grand Jury transcript. State of



Washington v. American Pipe Construction Co., 41 F. R. D. 59 (W.D. Wash. 1966), cited by appellant, is not in point. That was a civil, anti-trust, treble damage suit arising after the defendant had pleaded nolo contendere in a criminal anti-trust case. The District Court entered an order which inferred that Government counsel had authority to apprise counsel for private plaintiffs that testimony of a deposition witness was or might be inconsistent with his grand jury testimony. However, the order expressly provided that no grand jury transcript or extract therefrom could be revealed to non-government counsel. (pp. 61-62)

V

CONCLUSION

For the reasons stated above, the judgment of the District Court should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,  
United States Attorney,

DAVID R. NISSEN,  
Assistant U. S. Attorney,  
Chief, Special Prosecutions  
Division,

Attorneys for Appellee,  
United States of America.

DORIS R. WILLIAMSON,  
Attorney,  
U. S. Department of Justice

Of Counsel





CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ David R. Nissen

DAVID R. NISSEN



APPENDIX A

California Real Estate Commission Order  
of November 6, 1959  
(Ex. 1-237)





STATE OF CALIFORNIA

Division of Real Estate

November 6, 1959

Mr. Arnold Clejan, Individually

Arnold Clejan, Agent of Gamble Ranches, Inc. and of Gamble Ranch Development Corporation

Arnold Clejan, President of Gamble Ranches, Inc. and of Gamble Ranch Development Corporation

Arnold Clejan, Owner and Developer

Gamble Ranches, Inc., a Nevada Corporation

Gamble Ranch Development Corporation, a Nevada Corporation

-and-

Gifford & Cogan, Incorporated (Exclusive) Sales Agents for Gamble Ranch

9412 Wilshire Boulevard

Beverly Hills, California

Attention: Mr. Loyal Douglas Gifford, Real Estate Broker

IN RE: TRACT NO. - GAMBLE RANCH  
REG. NO. - 17603

(Commissioner's Order No. 11224)

Gentlemen:

1. Reference is made to prior letters from this office dated August 23, 1959 and September 16, 1959, addressed to Mr. Arnold Clejan, with reference to his subdivision filing on property in Elko County, Nevada.

2. The letter referred to above dated September 16, 1959 requested that Mr. Clejan desist and refrain from further offering of this property for sale in California until full compliance is made with the Subdivision Law of California by completing the filing which you made with the Division of Real Estate on August 26, 1959. (Receipt No. 2 22334)

3. Mr. Albert H. Allen, Attorney, 9350 Wilshire Boulevard, Beverly Hills, California, in a letter addressed to this office dated September 1, 1959, stated as follows:

"... Apparently Mr. Clejan has filed the application for subdivision under a misapprehension and he now seeks the withdrawal of such application.

"The property which Mr. Clejan owns is agricultural property and he proposes to sell the said property in parcels of more than 20 acres each, generally in parcels of 40 acres or more to persons who will use said property solely for commercial agricultural purposes. I have advised Mr. Clejan that under the provisions of Section 11000.5 of the Business and Professions Code, the division of property into parcels of 20 acres or more which are to be sold solely for the use of commercial agricultural purposes, are exempt from the provisions of the Code requiring the filing of subdivision maps and obtaining permission from the Department of Real Estate for a permit authorizing the sale of said property.





"This property will be sold only in parcels in excess of 20 acres and solely for the use of commercial agricultural purposes and no other purpose. Appropriate legends to that effect and provisions with regard thereto will be contained in any contract or agreement for the sale of any parcel of property. ... "

4. Without going into great detail at this time, it is desired to promptly advise you that from the information examined and from the data and proposed advertising and contract forms you have submitted, the Commissioner has concluded that the offering in California of said lands in Nevada for sale, is subject to the Subdivision Law of California and is not exempt under Section 11000.5 thereof and that the Commissioner can not approve such material but must prohibit its use for the following reasons.

5. It appears that many of the representations and much of the material which you have used or which you propose to use in offering said Nevada land for sale is incomplete, misleading or deceptive and that its use will result in a fraud upon the buyers, investors and the public.

6. For example, let us consider the blue colored sales brochure offering for the property which is distributed by you to residents of California who are prospective purchasers. It is headed: " 59 Gold Strike! Gamble Ranch, Home of the famous UC brand in Elko County, Nevada." It has a large reproduction of contented, grazing cattle in a fenced enclosure.

It is now understood that you concede that such picture was not even taken on the Gamble Ranch property, but is a reproduction of a picture taken on other property or from a Chamber of Commerce pamphlet. This constitutes false advertising under Section 10140 and 11020 of the Business and Professions Code.

7. The first inside sheet page of the blue colored offering brochure mailed to residents of California who are prospective purchasers of such 40 acre tracts in Nevada has the heading:

"Strike It Rich! " with a caricature of a gold miner holding a nugget in his hand. It does not disclose that buyers receive no oil, gas and mineral rights, all of which seller reserves.

8. Further, the blue sales offering brochure describes the property as:

"... a range land, so abundant, so fertile ... fertile ranch land; valuable ranch land that offers you security ... working ranch land that will produce ... will provide income for you and your family ... once in a life time opportunity to invest in ranch land ... the greatest investment value in the United States is now yours ... rolling-rich valleys of verdant range and meadowland ... abounding in springs, streams and reservoirs ... with winters that are generally mild and comfortable ... has the flexibility of modern ranching ... with capabilities and facilities for herding, fattening on minimum cost ranch-grown grain, selling and shipping cattle and livestock from its own railroad loading chutes ... Farming: The abundant water supply on the famous Gamble Ranch provides a rich and fertile crop-land for alfalfa, grain, truck farming and orchards. ...

"Federal Aid

"With the federal government sharing the cost of soil and water conservation and improvements such as fencing, planting grasses,





legumes, trees and shrubs, constructing wells, ponds or dams, developing springs or installing water line, the investment advantages of owning property on the famous Gamble Ranch is very attractive. With this government help, and the abundance of water for proven productive soil, the capital gains tax structure works for the ranch owner, providing your working investment with comfortable returns. ... "

9. In the blue sales offering brochure above referred to is a reproduction of a form entitled "Guaranty of Safety and Security" and stating that Seller will allow buyer an exchange privilege, anytime during the terms of the installment contract to trade in his acreage for any other available acreage of seller in the Gamble Ranch. ... "

10. Much of the foregoing representations in the blue brochure appears to be blatantly misleading and deceptive. Such offerings are being made as more of a gamble or speculative investment to "59 Gold Strike! ... Strike it Rich", rather than being offered to purchasers solely for commercial agricultural purposes. Yet, seller reserves all oil and gas and mineral rights for himself, which fact is not disclosed in the firm's sales brochures and newspaper advertising.

11. Just what, if any, part of the Gamble Ranch Mr. Arnold Clejan owns or what investment he has made is a great question.

We examined the Involuntary Petition in Bankruptcy filed in Federal Court at Los Angeles, California, Case No. 70411-C, in which he was adjudged a Bankrupt on March 1, 1956, and from which proceeding it appears he has not been Discharged. In fact, the Referee in Bankruptcy on two occasions, the last on December 13, 1956, denied the Bankrupt's Discharge and prepared Finding of Fact - that:

" ... on or about the 31st day of May 1955, the hereinabove bankrupt did give a statement in writing to Dun & Bradstreet, signed by himself, concerning his financial condition ... III that the bankrupt indicated cash in the sum of \$16,423.00 whereas in truth and in fact said cash amounted to only \$3,159.00. ... IV That the statement so made was a false statement and was given with the hope, expectation and intention of obtaining credit thereon. ... V. That under the heading of assets, the bankrupt showed an inventory of \$73,126.00 whereas in truth and in fact the said inventory as of the 31st day of May, 1955, was only \$24,950.00. ... "

12. It appears that Mr. Clejan's business background has been mainly with silks and textiles and with the ownership and operation of local retail "ladies and childrens" Ready to Wear Shops, formerly known as Lord's of California, 8638 West Pico Boulevard, Los Angeles and Lord's of Westchester, 8905 Sepulveda Boulevard, Los Angeles.

13. In view of the pending action in Federal Court at Los Angeles, California, Case No. 70411-C in which Arnold Clejan has been adjudicated a bankrupt and from which he has not been discharged, it is seriously questioned as to just what interest or ownership he may have in the Gamble Ranch properties or sales promotion venture relating thereto.



14. Also, the aforesaid findings of the Referee in Bankruptcy that Arnold Clejan intentionally signed and submitted a false financial report to Dun & Bradstreet, of course raises the question as to what credibility should be given to any of his representations, as to the nature of his present sales offerings and sales promotions both in his advertising material and in his application for a Subdivision Report from the Division of Real Estate of California.

15. At a recent conference held at this office on October 29, 1959, Mr. Arnold Clejan and his Attorney, Albert H. Allen, advised that the forty acre tracts advertised for sale by Arnold Clejan and the corporations he controls, as properties of the Gamble Ranch, Inc. were not included in any of the improved ranch and farm lands of the Gamble Ranch but were unimproved sage brush lands located in the shaded area of the sales brochure lying south of the town of Montello.

16. It has not been shown to us that there are any water, springs or reservoir water available for, or that the land offered for sale is suitable for development as commercial agriculture property. There is no showing of the cost of developing water for commercial agriculture use or whether any is available there.

17(a) A private land service operator, Fred Harris, known as Nevada Ranch Service, Elko, Nevada, has given Mr. Clejan a letter dated September 1, 1959, stating that land in the Montello area is suitable for commercial agriculture, and listing crops and fruit which he says the soil resources are capable of producing on a commercial basis. He does not state whether such crops can be dry farmed or will need irrigation.

(b) To a stranger the name Nevada Ranch Service might erroneously imply that the opinions expressed were those of a county or state service instead of simply what the letter shows as a private enterprise for profit, offering,

"A complete Land Service for the Range Livestock Industry."

(c) What, if any, soil tests Mr. Harris has made, whether he has examined the particular land offered for sale at this time or what qualifications he has as to the opinions he has expressed as to commercial farming operations, are not known to us.

18(a) There appear to be various misrepresentations in offering said 40 acre tracts for sale, particularly in the promotion-advertising material. For example in the blue colored sales brochure referred to above, it is stated that Federal Aid is available to purchasers.

(b) Mr. Clejan and the Gamble Ranches, Inc. and Gamble Ranch Development Corporation must know that Federal Aid is available only on land now in agricultural production. The program is not applicable to the development of new or additional lands by measures such as drainage, irrigation, and land clearing, for the purposes of carrying out approved soil and water conservation practices, etc, etc, as outlined in Paragraph 6 of the U. S. Department of Agriculture Handbook for 1959, page 2. It is apparent that such representations that Federal Aid would be available to speculators, investors, buyers, future farmers as to the tracts offered for sale are misleading and unfounded.

19. Any recitations or legends in the firm's contracts that the tracts are being solely offered and purchased solely for commercial agricultural purposes, are not controlling in the light of the numerous items of proof that it is offered principally as a speculative investment. ... "Strike It Rich .. "59 Gold Strikes", etc. etc.





20. Whether or not water for commercial agriculture development could be produced on those tracts is a question. A letter dated August 29, 1959, signed by Harold C. Anderson, 251 West Commercial Street, Elko, Nevada, advises Mr. Clejan that water for domestic purposes is available and for all culinary use and could be extended to lawn and garden irrigation, etc. etc. That indicates a very limited supply of water is available, nor is it clear what "available" means. Such comments do not establish that any water is presently available on these tracts which are being offered for sale, for commercial agriculture purposes.

21. The developed lands on the Ranch are not being offered for sale, we are advised.

22. We are advised that Mr. Arnold Clejan, early in 1959, was advertising in local newspapers for "Cheap Acreage Raw up to 100,000 acres". We conclude that what he is now selling is "raw land" and not commercial agricultural land.

23. Newspaper advertising of the Gamble Ranch 40-Acre Ranches appeared in the Los Angeles Herald and Express of September 4th and 25th, 1959 and full page advertisements appeared in the Los Angeles Times of September 13, 1959 and November 1, 1959.

24. We are not advised as to any ownership or investment Mr. Clejan may have in the 600,000 acre Gamble Ranches, Inc. property but in view of the pending Bankruptcy action in Federal Court at Los Angeles, California, in which Mr. Clejan has been adjudicated a Bankrupt, clarification of any offerings and representations he now makes appear to be in order. There is a large blanket mortgage, purportedly amounting to some \$400,000. against the property and there has been no proof submitted that clear title can be issued to purchasers if as and when their individual contracts are paid up.

25. We are informed that Mr. Clejan is President of Gamble Ranch, Inc. and Gamble Ranch Development Corporation and is agent and developer for both in connection with the aforesaid subdivision filing. We are also informed that neither of these corporations is authorized to do business in California not having registered with the Corporation Division of the Los Angeles County Clerk's Office; nor is either of these firms, nor their agents or brokers, offering said lands for sale in Nevada but propose to make all such sales at their broker's offices in Beverly Hills and through sub-agents in other parts of Southern California.

We are also informed that Mr. Clejan owns 90% of the stock of both of said Nevada corporations and exercises complete control thereof and hence said corporations may be deemed to be his alter egos, as he is now a bankrupt, any funds paid to him or to his alter egos would be subject to the bankruptcy court; hence to permit contract purchasers to pay moneys to Clejan or to said corporations might well result in the total loss thereof unless provision is made for such payments to be placed in trust for the purpose of lifting the blanket lien as is required by Sections 11013 - 11013.2 of the Business and Professions Code. Such offering sale must therefore be prohibited for non-compliance with said sections.



26. In view of each and all of the foregoing facts and circumstances, the Real Estate Commissioner is of the opinion that the use of the foregoing sales promotion material would tend to mislead the public and would-be investors or purchasers and would be violative of the aforesaid Subdivision Rules and Regulations implementing it.

(a) The sale of said lands is subject to the Subdivision Law of California, Business and Professions Code, Section 11,500 et seq. and is not exempt therefrom by Section 11500.5.

(b) That the material used constitutes false advertising. Therefore, you and each of you, your agents, employees, are prohibited from using, disseminating or publishing sales promotional material referred to above, pursuant to Sections 11517(f), 11520 and 11543 of the Real Estate Law, and from using any of the aforesaid advertising and sales promotional literature and from offering this property for sale in California until you have presented evidence to the Commissioner which will show that it does not have a tendency to mislead in the respects referred to above and or until you have fully complied with the Subdivision Law, including provisions for releasing the blanket lien, and have completed the filing you started with this office and a Subdivision Report has been issued by the Commissioner.

If you so desire, you may file a written request for a hearing with this office to be held here within 30 days of this Order, in accordance with the provisions of Section 10734, Statutes 1959, Chapter 216, Section 1, of the Business and Professions Code of the Real Estate Law.

DATED: November 6, 1959

W. A. SAVAGE

Director of Real Estate & Title  
Office of Real Estate

By Henry H. Block  
Deputy

cc: Mr/ Albert H. Allen  
Attorney at Law.





APPENDIX B

Reproduction of Pace Filmstrip

(Ex. 2-1058)

and

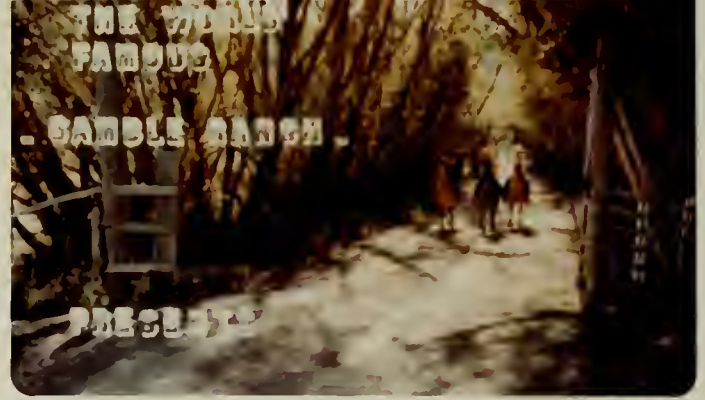
Transcription of Accompanying Sound Recording

(Ex. 2-1058)





1. (Music)



2. (Music)



3. (Music)



4. This is a small part of a great western tradition. A vast cattle and land empire. The world famous Gamble Ranch.



5. Here remain the magnificent vistas, the clear clean air, the fertile earth first glimpsed by the rugged American frontiersmen of the early 1840's.



6. Over this land, trail blazing as they went, our forefathers brought their families, their herds, to new land.







7. For almost a hundred years the Gamble Ranch has been a successful cattle operation.



8. The land here is abundant in feed and water and the climate ideal.



9. Today the old wagon trails are modern super highways like trans-continental U. S. 40, linking the length and breadth of America. Highway 30 runs directly through Gamble Ranch -



10. As does the main line of the Southern Pacific Railway on its way to San Francisco and the Pacific.



11. Look closely at this map. As you can plainly see, the world famous Gamble Ranch lies in the hub of the 11 western states -- directly in the path of the economic and population explosion occurring now in America, and especially Western America.



12. The world famous Gamble Ranch, the largest single ranch under one fence in the continental United States, acres of fertile scenic beauty -- if placed on a map of Southern California,







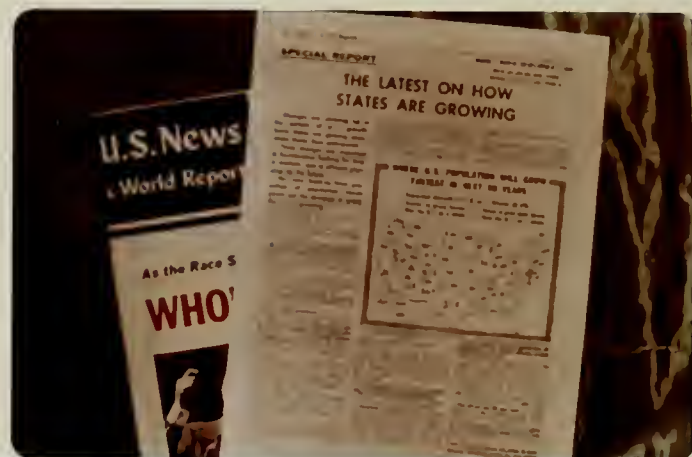
3. the ranch would reach from Los Angeles to San Bernardino, some 53 miles in length---from Pomona to Balboa, some 22 miles in width.



14. Millionaire celebrities like Bing Crosby and Jimmy Stewart invested here in Elko County Nevada. But you needn't have millions to own your share of the future of Western America.



5. The world famous Gamble Ranch has decided to make available acreage in a small portion of their gigantic holdings. Parcels ranging from 2½ acres on up are being offered to the public to keep pace with western population expansion.



16. In the past ten years Nevada has led the nation in population increase percentage wise. A whopping 63% increase. And U. S. News and World Report predicts the state population will up 37.9% in the next ten years, making it the fastest growing state in the Union by far.



7. The government of the State of Nevada is making every move to encourage this rapid growth. Here's a quotation from a letter written to the developers of the world famous Gamble Ranch from the Honorable Grant Sawyer, Governor of the state of Nevada.



18. "On behalf of this office and the state of Nevada, I would like you and your friends to know that this state will most heartily welcome such a development which accords with a basic policy of this administration -- orderly development and expansion







to bring several ambitious program.

On behalf of this office and the State of Nevada, I like you and your friends to know that this State most heartily welcome such a development which accords basic policy of this administration: orderly development and expansion of this State rapidly, but surely.

We shall, therefore, be glad to cooperate in every within the channels of governmental functions to assist to accomplish such development and expansion. Let me personally wish you the best of success in this program.

Sincerely,

*Grant Sawyer*  
Grant Sawyer

19. We shall therefore be glad to cooperate in every way within the channels of governmental function to assist you to accomplish such development and expansion. Let me personally wish you the best of success in this program. Sincerely, Grant Sawyer, Governor".



21. The world famous architectural firm of Victor Gruen & Associates has submitted master plans for the suggested new communities within the ranch.



23. A suggested new city--

20. To insure that the development of Gamble Ranch would adhere to the policies of the government of Nevada, no expense was spared.



22. Only after intensive research on the area did Gruen's expert staff submit their plans.



24. Civic center-- Planned shopping center to rise on the ranch.







25. Adoption of these plans would insure the orderly growth of the community.



27. Beautiful blue water provides excellent boating. Uncrowded water areas waiting to be explored.



29. Rainbow and brown trout that are no fish story, are teeming in the government stocked reservoir right on the ranch.



26. Already it's starting. New accommodations for the increasing tourist activity are being built and Gamble Ranch is destined to become one of the great sports meccas of America.



28. Water-skiing on a placid reservoir --bigger than some lakes and harbors



30. If hunting is your meat, the upper-reaches of the ranch provide game in abundance. Twenty-two hundred head of deer taken last season alone and when the deer season is over--







31. Prize winning duck and game bird can be your next target.



32. In the winter the easily reached snow covered mountains of the state will provide you with the fun of winter sports and--



33. for in town fun it's only a short drive to the towns of Wells or Elko, Nevada.



34. Here is Las Vegas or Reno in miniature with a true western atmosphere and a hustling, bustling vitality.



35. On the ranch itself is the town of Montello-- small but already feeling the surge of expansion.



36. Here you can build-- raise your family in the American tradition. Away from smog filled cities.







37. Here togetherness means something new and fresh.



39. The three R's are taught in this Montello school where there is still time for individual personalized instruction.



41. Water in many areas is just below the surface of the ground. The consulting engineers, Stetson, Strauss & Dresselhaus, commissioned by Gamble Ranch, reported --



38. Youngsters are healthy and rugged.



40. Water is in abundance. Easily drilled wells bring in plenty of water.



42. "The ranch lies in the Utah-Nevada water basin with no river outlet to the sea. All precipitation remains sub-surface, forming a vast lake beneath the land."



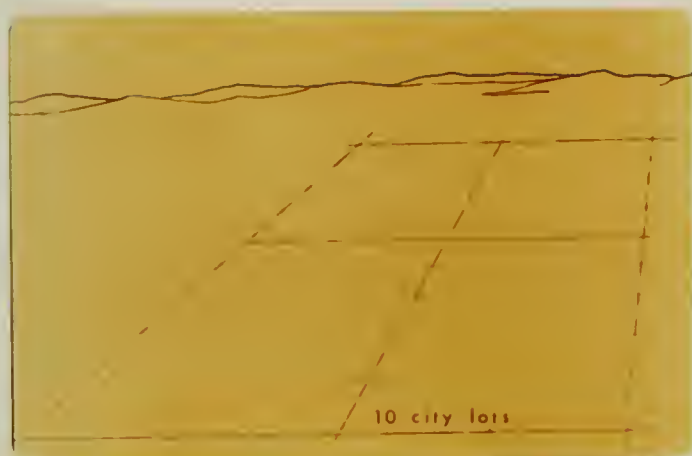




43. Electricity is here, and you can watch your favorite television western with reception bright and clear.



45. And you have the opportunity of owning land here. Imagine having a ranch of your own for a fraction of what you might pay for a desert lot.



47. You could divide ten acres into four -  $2\frac{1}{2}$  acre parcels today-- not tomorrow but today. And each  $2\frac{1}{2}$  acres is equivalent to ten city lots in area.



44. The climate and soil resources are capable of producing numerous types of crops and the valley is sheltered from violent storms and wind by the surrounding mountains.



46. Real estate holdings are the basis of all great fortunes. Land values have vastly increased while inflation has whittled away at the buying power of your dollar.



48. Or keep this precious land. Enjoy it and realize the ever increasing value of this beautiful country-- your country.





49. Pass this legacy, this heritage, on to your children. You had chances before and you missed out. But a small investment today will make you a land owner.

50. Here is your chance to own acreage, buying direct from the original subdivider. Your chance to own a ranch with elbow room with a profit potential second to none.



51. The opportunity to own a piece of the tradition of the Old West--

52. The opportunity to watch your dollars grow in the modern west is yours now, today -- Don't miss it!



53. The End.





APPENDIX C

Reproduction of Photograph of Land

Being Sold South of Montello

(Ex. 2-267-V)









APPENDIX D

Schedule of Purchaser Witnesses



SCHEDULE OF PURCHASER WITNESSES

<u>NAME</u>	<u>TRANSCRIPT</u>	<u>PAGES</u>
Ackerman, Phyllis A.	2266 -	2374
Adams, John C.	8598 -	8632
Ayers, Alfred W.	2554 -	2631
Barham, Dona M.	2707 -	2794
Barras, Mildred	6952 -	6995
Bauer, Pearl	6630 -	6705
Bell, Frances	8539 -	8598
Blackwell, Ray	6122 -	6248
Boothe, David	4144 -	4231
Burks, James F.	8278 -	8325
Burt, Frank	8427 -	8461
Coxe, Susan	6564 -	6629
Davidson, Albert Wesley, Jr.	3499 -	3715
Dennis, Lorraine	7851 -	7922
Ellwood, Harold Fay	2873 -	2984
Farmiloe, Bert	7431 -	7450
Fleischmann, Frederick A.	8131 -	8186
Fowler, Glenn	7530 -	7610
Gibson, Woody	7611 -	7665
Glasgow, Willis H.	8462 -	8513
Graham, Clarence	3716 -	3780
Hansen, Lawrence C.	3371 -	3458
Hazlewood, Blanche	8042 -	8080





Imler, Virginia Lee	2672	-	2706
Ingraham, Edward Kenneth	3781	-	3836
Iverson, George	7674	-	7731
James, William P.	2838	-	2873
Jones, William T.	8326	-	8350
Kaczmarczyk, Doris	8080	-	8090
Lannigan, John	2985	-	3018
Lombardi, Marie	8513	-	8538
Loswick, William M.	8233	-	8278
Lytle, Robert	7961	-	7988
Monroe, Roy	8092	-	8131
Morse, Verne	8187	-	8231
Munger, Alfred	7370	-	7431
Murray, George B.	8671	-	8702
Patterson, Phyllis	4630	-	4664
Prosser, Royce S., Jr.	8702	-	8754
Rogers, Winifred I.	8018	-	8042
Rose, Joan	6916	-	6943
Smith, Clyde W.	8351	-	8387
Smith, Lois	2822	-	2837
Sorrell, Isaiah	7824	-	7851
Stancil, Albert	5081	-	5104
Stancil, Odelle Ann	5073	-	5081
Starick, Sue C.	7923	-	7961
Suehnholz, Ellamay	6096	-	6121



Tannas, Boris	7305	-	7369
Uribe, Luis	7732	-	7792
Wallum, Peter	7006	-	7037
Whitlock, Sandra Janet	8632	-	8670
Wilson, Richard K.	3019	-	3101
Wold, Charles B.	2430	-	2525
Zimmerman, Robert Martin	2632	-	2671



## APPENDIX E

Schedule of Misrepresentation Charged in Indictment,  
and Summary of Evidence Proving Their Falsity



## PRESENTATIONS

## PROOF OF FALSITY

### The Ranch

The 600,000 acre Gamble Ranch was being subdivided and sold (Ex. 2-1074)

The Ranch had been "kept off the market for decades" (Ex. 2-32, newspaper P. 11)

The Gamble Ranch is "World Famous" (Ex. 2-1058 and 2-1059, film strip, Frame # 4)

The promotional material (Ex. 2-1058 and 2-1059 for example) is mute with regard to Federal ownership of the alternate sections on the ranch. The checkerboarded pattern of the sections of land within the boundaries of Gamble Ranch is depicted on Bureau of Land Management maps (Ex. 2-1230) and on various pieces of promotional material (Ex. 2-249). B. M. Stewart testified he conveyed title to 236,000 acres to Arnold Clejan and two business associates in 1959 (R.T. 894 and 903). As of August 31, 1961, Westates Land Development Corporation owned in fee approximately 236,000 acres of land on the Gamble Ranch. The company was entitled only to grazing privileges in approximately 364,000 acres of land in areas adjacent to the Gamble Ranch checkerboarded sections owned in fee (Ex. 1-261, P. 3). Stewart testified the initial release of acreage from the liens of two deeds of trust and a mortgage covered 10,000 acres, that the principal release involved 40,000 acres, all south of the railroad; and that later on there was a release of 7,000 acres north of the railroad (R.T. 905-910). With the exception of the latter 7,000 acres, sales were limited to that portion of the Gamble Ranch south of the Southern Pacific railroad tracks (Ex. 1-243 and 2-1075). Donald Clark, who maintained the inventory of available parcels for sale from March, 1960, until sales were stopped, testified he prepared Exhibits 1-243 and 2-1075 to reflect sections of land for which the California Division of Real Estate had issued Public Reports (R.T. 3895 to 3897; 3914 to 3919).

Prior to 1959 the "World Famous" ranch was unknown to the men who became the principals. Postal Inspector Jacobson testified that in response to his question Reisman told him he first heard of the Gamble Ranch when he was asked to represent Benaron and Byrnes in





regard to purchase of the ranch from Clejan (R.T. 9174). The Postal Inspector also testified the principals Benaron and Byrnes told him they first heard of the ranch when approached to participate in the venture (R.T. 9168 and 9201), that Benaron told him he could not state that the Gamble Ranch was world famous (R.T. 9202).

### Land, Soil and Crops

"Lush farm lands"  
(Ex. 2-128, color brochure)

"Fertile ranch-land"  
(Ex. 2-19, black & white brochure)

"Rich grazing land"  
(Ex. 2-19, black & white brochure)

"Workable ranch-land with unlimited produce-ability"  
(Ex. 2-19, black & white brochure)

"Fertile crop land"  
(Ex. 2-19, black & white brochure and Ex. 2-1074, newspaper, P. 8)

"Not desert and rocks but workable land... land that will produce"  
(Ex. 2-1074, newspaper, P. 6)

"Good, arable land that should be farmed"  
(Ex. 2-1074, newspaper, P. 21)

"Rich fertile valley land"  
(Ex. 2-1-C & 2-2-0, radio & TV script)

Whatever croplands there are, fertile or otherwise, are located on the northern sections of the ranch, which lands were never subdivided and offered for sale. Stewart, who acquired the 30 by 36 mile ranch in 1952, (R.T. 883) testified that vegetation in the Montello Valley consists of various types of sage which are typical of northern Nevada and used as winter range for cattle, (R.T. 887-888) that none of the improved lands were released by him from the lien of the trust deeds and mortgage (R.T. 910), that the principals first wanted released the flat land south of the railroad tracks which was the least valuable (R.T. 955), that he never considered it suitable for farming and that he told the appellant and his associates what his ideas were and findings had been relating to the soil and its conditions and feasibility of what could be raised, and never told them the land south of the tracks is rich, fertile cropland and rich for growing grains and orchards (R.T. 14,127 - 14,128). The witness also testified there are two portions of the Montello Valley, the dividing line roughly being the railroad tracks, the soil in each being entirely different, and there being only 3,000 acres of desirable farmland south of the tracks in one particular section (R.T. 14,140).

Stewart testified that he was able to grow on Gamble Ranch alfalfa, corn, barley and wheat, and that he so advised Clejan (R.T. 939 - 940).



"Real rich lush land" "For a fraction of what you might pay for a desert lot"  
(Ex. 2-280, radio script, P. 4; Ex. 2-1058 & 2-1059, film strip, Frame 45)

"Rich land, unequalled anywhere"  
(Ex. 2-282, P. 4)

"Land with a richness unexcelled"  
(Ex. 2-280, radio script, P. 1)

"Abundant in feed and water"  
(Ex. 2-1058 & 2-1059, film strip, Frame 8)

"A valley of beauty and not desert sand"  
(Ex. 2-192, Gazette of 6-61, P. 7)

The land was suitable for "commercial agricultural purposes"  
(Ex. 2-1074, newspaper, P. 8 & 17)

The climate and soil resources are "capable of producing a wide range of land, tree and truck crops such as wheat, corn, potatoes, lettuce, onions, apples, apricots and many more on a commercial basis"  
(Ex. 2-1074, newspaper, P. 22)

"The abundant water supply... provides a rich and fertile crop-land for alfalfa, grain, truck farming, and orchards"  
(Ex. 2-19, black & white brochure)

"Rolling-rich valleys of verdant range and meadowland"  
(Ex. 2-19, black & white brochure)

Mark Menke, since 1929 the Elko County Extension Agent with the University of Nevada and U. S. Department of Agriculture, testified the soils in Montello Valley are generally quite alkaline, causing the presence of very little sagebrush and of rabbit brush two to five feet high, indicative of alkaline to alkali conditions; but much of the Valley south of Montello growing shadscale, a dwarf type of plant six inches to two feet tall (R.T. 4986 - 4988). The witness also testified that soil additives to overcome the alkalinity in the valley lands south of Montello would be almost prohibitive from the standpoint of costs and would be prohibitive for horticultural purposes (R.T. 5014, Ex. 1-800).

Witness Menke testified the scale of alkalinity (pH) runs from 0 to 14, with 7 being neutral, that at 9 to 9½ there are eliminated a number of crops susceptible to alkaline conditions, which would be most of the clovers, beans, and most horticultural crops such as fruits including pears and apples (R.T. 4989). Of 13 test of Gamble Ranch soils, one registered pH of 8.1, while 12 registered from pH 9.0 to 9.8 (Ex. 2-1246).

Menke testified that two cuttings of alfalfa per year would be the regular dependable thing, assuming there is irrigation water for two cuttings; that no alfalfa has been grown on the land subdivided and sold, that the average annual production of Elko County is 2-3/4 tons per acre, that on the better lands on Gamble Ranch the production would be a maximum of 4-1/2 tons to 5 tons per acre, down to 2 tons after four to six years of the stand, with an average of 3-1/2 tons (R.T. 5007 - 5010).

Menke testified that the first pre-requisite for commercial agriculture in Elko County is water --- without water no harvested crops can be raised (R.T. 4985), and that he knows of no commercial agriculture land or commercial irrigation well on Gamble Ranch



"An annual crop of 240 tons of alfalfa from 40 acres" (Ex. 2-114, brochure, P. 8, 7th par.)

south of Montello (R.T. 4986). He also testified the growing season at Montello is comparatively short, limiting crops which can be successfully grown to those which will mature in the neighborhood of 120 frost-free days, and that there are seasons when the frost-free period may be even shorter than that (R.T. 5023 - 5024). Frost may occur as late as June 20 and as early as September 1 (R.T. 4992). Menke also testified he knows of no farms or ranches in Elko County of 160 acres or less which procure a living from commercial agriculture (R.T. 4990 - 4991). He also testified that the flat land south of Montello because of high alkalinity would not be suitable for strawberries, raspberries, apples, pears, peaches and things of that sort (R.T. 5013). Crops of that nature could be grown in the alluvial fans "up off the flat portion of the Valley" (R.T. 5014). There are no commercial poultry farms or dairies in Elko County (R.T. 5014).

Clair M. Whitlock, since 1961 the manager of the Elko District, Bureau of Land Management, U. S. Department of the Interior, testified that the vegetation on the land subdivided and sold is such that 160 to 200 acres would be required to sustain one cow for one year (R.T. 5519). He also testified that he classified the Montello Valley as a desert and classified its appearance just prior to May 6, 1965, as "gray" (R.T. 5530).

Postmaster Melva Pearson testified with regard to the plot south of Montello that the Montello town folk "always have called it the desert; everybody does" (R.T. 4960 - 4961). Under cross-examination, Mrs. Pearson was asked if the land does not look "pretty much the same both north of the tracks and south of the tracks". Her reply was, "I guess it does to you. To me it doesn't look the same because I know the country" (R.T. 4978 - 4979).





Postmaster Pearson testified she and her husband have farmed for 20 years Pearson Ranch of 160 acres eight miles east of Montello in a sheltered cove in the foothills. They have 35 acres of hay land planted to oats and alfalfa, and five acres of orchard and garden in which they raise corn, carrots, beets, potatoes and tomatoes sometimes. They are able to raise tomatoes by keeping them covered until the middle of June. In the orchard are the hardy fruits such as pears, peaches and apples and several types of plums and apricots. Their location is about 10 degrees warmer in winter than on the flat below. In some years killing frosts occur every month of the year, or at least nine or ten months of the year, on the average of every second or third year when fruit is killed in blossom. This also occurs to tomatoes and corn. There are a couple of plum trees in Montello that kept fruit on them a couple of times. The Pearson Ranch is above where the old salt lake evidently was, and soil at the Pearson Ranch does not have the alkali content of the flats (R.T. 4951 - 4955).

The promoters in filing with the Securities and Exchange Commission a Registration Statement under the Securities Act of 1933, acknowledged, "The Company has not made any extensive study of soil conditions on the Gamble Ranch, but such information as is presently available indicates that most of the soil on the Company's properties has a gravelly consistency and is not of high quality. There is some evidence of alkali in the soil, which if present in sufficient quantities, might adversely affect the ability of the company and purchasers of the land successfully to develop farming operations thereon (Ex. 1-261, P. 10).

Tests on seven samples of soil removed from one 40-acre subdivided ranch showed the soil is low in organic matter, low and low-medium in the nitrate and phosphate nutrients,



and that it contains some soil salts and some black alkali. Generally, the samples were classified as low in fertility. For the soil to be developed, provisions would have to be made for fair to good drainage and an ample supply of good quality water (Ex. 2-1246; R.T. 9287).

The principals were advised in February of 1961 by competent opinion that much of Gamble Ranch soils are heavily alkaline and too much so for many crops, and that it could cost several hundred dollars per acre to condition the soil (Ex. 2-892-A8; R.T. 3898 - 3900).

The promoters acknowledged in Amendment 1 to the SEC Registration Statement, "In the opinion of the company, the parcels previously sold and those presently available for sale are, in many instances, relatively less desirable from the purchaser's point of view than other more easily accessible and fertile tracts which are not presently being offered for sale." (Ex. 1-415, P. 19).

Having purchased the land in reliance upon the promotional material, much of it colored, the purchasers experienced varying degrees of shock upon visiting the property and finding it to be desert, covered with sagebrush (Examples: R.T. 2327 - 2336, 2449 - 2453, 2686 - 2687, 3031 - 3035, 7539 - 7540, 7746 - 7750, 7862 - 7864, 7929 - 7934, 8041 - 8042).

Fred Harris, a ranching expert, under date of September 1, 1959, furnished to Clejan a letter listing the crops which the climate and soil resources are capable of producing on a commercial basis, which letter was used widely in the promotion until estopped by Harris on September 25, 1961. The letter listed alfalfa, clover, wheat, oats, barley, rye, potatoes, corn, beets, beans, peas, truck crops, store fruit and small fruit. On September 25, 1961, Harris advised J. J. Byrnes, vice president of Gamble Ranch, that



he intended to inform purchaser - inquirers as follows: "The statements made in this letter were not intended to apply to any and all lands Gamble Ranch Investments may choose to sub-divide and sell. My letter was intended to apply only to the agricultural lands of the old Gamble Ranch in the Montello area". Harris in testimony explained this related to the land then in agricultural use (R.T. 2151 - 2155).

## Water

"Water is abundant and easily obtainable"

(Ex. 2-1058 & 2-1059, film strip, Frame 40)

"There are many springs on the ranch"

(Ex. 2-128, color brochure)

"Water comes to the surface and flows through green valleys into several reservoirs"

(Ex. 2-128, color brochure)

"Abounding with springs, wells, streams, sub-surface water deposits, rain and melting mountain snow, irrigation systems on Gamble Ranch are further supplied with water by Thousand Springs Creek, controlled and dammed by three reservoirs"

(Ex. 2-1074, newspaper, P. 6)

"This abundant water supply on Gamble Ranch provides a rich and fertile crop-land"

(Ex. 2-1074, newspaper, P. 6)

"Water is plentiful...this precious commodity is in abundant supply"

(Ex. 2-1074, newspaper, P. 21)

The appellant testified the source material he used in passing on advertising included the book prepared by Previews, Inc., which figured in the sale of the ranch by Stewart to Clejan and his associates. He also testified that Stewart had re-confirmed for him "everything" that was in the book (R.T. 13,062 - 13,063). An entire section in that book is entitled, "Water and Irrigation", and that section is shown to be based on a report filed by a Denver, Colorado, irrigation engineer following a study in May of 1957. The report details the current sources of water irrigating at that time 4,240 acres of crop land and 9,300 acres of meadow land. In discussing potential irrigated lands, including the "winter fat" range (the area being subdivided), the report recommends that a minimum of 25 strategically located test wells be drilled, and that certain other studies be made. In summation, the report states that it should be possible to develop sufficient water to irrigate 14,000 acres of the 600,000 acre "spread", "assuming that test wells substantiate this". The 14,000 acres are represented as 6,000 acres for alfalfa, 6,000 acres of high production irrigated pastures, 1,200 acres for grain, and 800 acres for corn (Ex. 1-1128, P. 25).

To meet requirements of the California Division of Real Estate (R.T. 10,330), the engineering firm of Stetson, Strauss and Dresselhaus in late 1959 was requested to,





"Here are streams, springs, wells, crystal clear reservoirs and lakes... in an area of Nevada that abounds in streams, wells, fertile cropland"  
(Ex. 2-1, radio script, L, M & N)

"There is an abundance of water on Gamble Ranch"  
(Ex. 2-280, radio script, #14)

"Water comes to the surface and flows through green valleys into several reservoirs, through the many springs existing on the ranch"  
(Ex. 2-282, radio script, P. 2)

"Water is in abundance"  
(Ex. 2-1058 & 2-1059, film strip, Frame 40)

"Easily drilled wells bring in plenty of water"  
(Ex. 2-1058 & 2-1059, film strip, Frame 40)

"Water in many areas is just below the surface of the ground"  
(Ex. 2-1058 & 2-1059, film strip, Frame 41)

and did, make a study of the prospects of developing water sufficient for domestic use (R.T. 10,403). The firm filed a 21-page preliminary report, from which was quoted in promotional material only excerpts which would favor the promotion. The report, for example, showed that, "Ground water at the present time is within 8 feet of ground surface in at least two locations in the valley area of the unit", those two being among the stock wells drilled on the Montello desert by the Utah construction company, owner prior to Stewart. In the third of the four stock wells on the desert visited during the field investigation on December 29, 1959, water surface was near 170 feet below ground surface. The report pointed to the "paucity" of data on which to base accurate predictions (Ex. 2-884, P. 1 & 10).

The defendants' witness, Thomas M. Stetson whose firm authored the two water reports submitted to the principals' company, testified under cross-examination that work recommended in the initial report of January 1960 in order to develop additional facts to support statements about water potential, was never accomplished (R.T. 10,411 - 10,413). Stetson also testified the statement, "Water is in abundance. Easily drilled wells bring in plenty of water", is generally true of the Montello unit but that he did not believe it would be true with respect to "everywhere" in the unit such as the areas overlying bedrock (R.T. 10,565 - 10,568). He also testified the statement, "Water in many areas is just below the surface of the ground" is true with regard to the area up near the town of Montello, but not true "as you get further and further south" (R.T. 10,568 - 10,569). Stetson also testified there are no actual streams in the Montello unit itself (R.T. 10,614).





Subsequent letters furnished by the engineering firm to the promoters for attachment to their applications for Public Reports pertaining to the various blocks of subdivided land stated it might become necessary to haul water to areas away from the center of the valley, and placed the prospective cost at \$1.00 to \$2.00 per 100 gallons (Ex. 2-883-EE, 1-184 to 1-200).

Harris testified he found it necessary to order withdrawal of his initial letter by his letter of September 25, 1961, which also informed the vice president of the Gamble Ranch Company that on the lands being subdivided and sold, "Surface irrigation water is non-existent and underground irrigation water is an uncertain quantity". (Ex. 2-1229; R.T. 2154 - 2156).

Stewart testified there were 11 irrigation wells on Gamble Ranch, all producing well except for one which was set crooked; that all were north of the tracks in the northern part of the ranch, that 4,000 acres were under irrigation when he bought the ranch and that he broke out an additional 5,000 acres, but not all of which were put to beneficial use (R.T. 956 - 957). He also testified there were some springs in the mountain areas south of the railroad tracks, but none on the flat land south of the tracks (R.T. 955).

In Amendment No. 1 to the SEC Registration Statement, the Company said, "The company has received reports from its water supply engineers, Stetson, Strauss & Dresselhaus, Inc., indicating that it may not be economically feasible to drill for water upon approximately 126,000 acres of land owned by it on the Gamble Ranch and the California Division of Real Estate has refused to issue a Public Report with respect to approximately 8,500



of said acres unless and until the company is able to present an acceptable plan for the supply of water thereto. Unless the company is able to present such a satisfactory plan, the California Division of Real Estate may likewise refuse to issue a Public Report with respect to the remaining approximately 117,500 affected acres... The problem is presently under study by the company but there is no assurance that the company will be able to devise means for supplying water to these areas... average annual rainfall on the Gamble Ranch is approximately 8-1/2 inches and... it is questionable whether a water supply can be economically developed for substantial portions of the company's properties (Ex. 1-415, P. 5 & 6).

The company drilled or assisted in financing the drilling of four wells south of the railroad tracks. The well brought in at the motel was drilled to a depth of 290 feet and pumped 20 gallons per minute, sufficient for needs of the motel (R.T. 6130 - 6138). An irrigation well about 100 yards east of the motel was drilled to a depth of 420 feet, the static water level was at 172 feet and there was insufficient water to test (Ex. 2-1250-A, R.T. 6513 - 6517). Albert W. Davidson, the principals' representative on the ranch and for whom the well was drilled, testified the well would pump 320 gallons per minute for 20 or 30 minutes and then the water level would drop below the pumping level, requiring a 20 - 30 minute "rest" before pumping resumed (R.T. 3688 - 3689). Another well was drilled about eight miles south of the motel, on subdivided land. This well was 350 feet deep with the static water level at 149 feet. After 1-1/2 hours of test pumping at 446 gallons per minute, the water level had dropped 100 feet (Ex. 2-1250B; R.T. 6517 - 6521). Albert Stancil, the



purchaser on whose land the well was drilled, testified he and his associates returned the 160 acres to Gamble Ranch because the well did not produce the 1600 gallons per minute required to irrigate their holdings (R.T. 5083 - 5085). The Stancil well actually was 610 feet deep, with casing perforated from 350 feet to 610 feet. (Ex. AF, R.T. 4385 - 4386). The fourth well, known as the Patton well, was drilled to a depth of 631 feet, and in test pumping had a drawdown of 175 feet. To the Government's expert witness, the necessary lift of the water and the absence of cultivated fields in the area indicated no economic success of this well in over two years (Ex. AE, R.T. 4386 - 4388).

George B. Maxey, a geohydrologist called as an expert witness by the Government, testified that the Castle Rock Well which on December 29, 1959, assertedly had a depth of seven feet to water, on April 22, or 23, 1965, had a water level of 154 feet; and that Montello Well No. 1, which assertedly had a water level of eight feet on December 29, 1959, was actually dry at 100 feet on April 22 or 23, 1965, 100 feet being the depth of that well (R.T. 4251 - 4253). Dr. Maxey also testified that from the latitude of Montello southward the water level ranges from 50 feet to something over 185 feet, and that northward of Montello water levels are 40 or 50 feet (R.T. 4258 - 4259). He also testified that the statement, "all precipitation goes to sub-surface" is a scientific absurdity (R.T. 4287). The witness also testified there are no springs and no water that comes to the surface and flows into reservoirs in the area known as the Montello Unit, but that such conditions obtain primarily where the reservoirs are constructed north of the railroad tracks (R.T. 4289 - 4290). Dr. Maxey also testified that in his opinion there is no lake or underground body of





water beneath the subdivided land, nor is water in such areas just below the surface of the ground (R.T. 4292 - 4294). He also testified that in his opinion sufficient water could not be obtained from irrigation wells to irrigate 40,000 acres of alfalfa in the Montello Valley (R.T. 4296 - 4300).

Menke testified the cost of drilling a well on Gamble Ranch generally is one dollar per foot per inch of casing diameter, or \$16 a foot for a 16-inch irrigation well, and that equipping such a well with pump and engine could run from \$3,000 to \$15,000 or more (R.T. 4994).

### Electricity and Television

"Electricity and power are in, ready to be used today - not tomorrow"

(Ex. 2-819A, 2nd Par.)

"Electricity is here"

(Ex. 2-1058 & 2-1059, film strip, Frame 43)

"Ample electricity to serve residential and farming needs is supplied to the Ranch by the Rural Electrification Administration"

(Ex. 2-114, brochure, P. 8)

"Reception is bright and clear"

(Ex. 2-1058 & 2-1059, film strip, Frame 41)

Witness Stewart testified that during his ownership of Gamble Ranch, he deposited \$37,000 to help defray the expense of running the Raft River electric cooperative power line from Lucin, Utah, to the Gamble property for the principal purpose of running irrigation pumps, but that the supply was inadequate to run all the pumps and the mill at the same time (R.T. 893).

On January 22, 1960, Raft River wrote Reisman, "Assuming that one half of the land were to be irrigated and with a ranch type consumer on each one 40-acre parcel, a thumbnail estimate of the cost of serving the project with power would be \$1,500,000.00 (Ex. 2-1248). Raft River did extend the power line to the motel, about six miles south of Montello, but nowhere else (Ex. 2-1249; R.T. 5231 - 5232).

Edwin T. Schlender, manager of Raft River, testified his company informed the promoters they would have to guarantee an annual return of revenue equal to 12 percent of the cost of construction necessary to serve new customers (R.T. 5235). A guaranteed revenue agreement with the promoters never materialized (R.T. 5225).



Purchaser Albert Stancil testified Raft River would have charged him about \$10,000 to bring electricity to his parcel from the motel, eight miles away (R.T. 5089, 5091 - 5092).

Postal Inspector Jacobson testified that at about 4:30 p.m. on May 24, 1962, a modern television set in the home of a Montello resident brought in only one station on one channel, from Salt Lake City, and that the picture was very snowy to the point he could hardly make out the picture (R.T. 9109 - 9110).

### Climate

"Winters are generally mild"  
(Ex. 2-1074, newspaper, P. 21)

"Winters... are generally  
mild and comfortable"  
(Ex. 2-19, black & white  
brochure)

"The valley is sheltered  
from violent storms and wind  
by the surrounding mountains"  
(Ex. 2-1058 & 2-1059, film  
strip, Frame 42)

"The Montello valley has no  
serious agricultural hazards  
such as hail, violent winds,  
torrential rains, floods, and  
dust storms"  
(Ex. 2-4, Harris letter)

Postmaster Pearson testified about eight or nine inches of snow fell on or about June 11, 1964, that snow cuts communications with the outside from Montello, and that it has been necessary to airlift in food for cattle because of the snow (R.T. 4955 - 4956). She also testified cloudbursts occur several times in the summertime, washing out roads; that in the Montello area she has witnessed dust storms, winds sufficiently high to fell a tree and television antenna, and hailstorms, some causing loss of garden crops and alfalfa (R.T. 4956 - 4958).

Stewart testified that blizzards occur in the springtime (R.T. 896).

Harold D. Scott, the Montello observer for the U. S. Weather Bureau, testified the temperature dropped to 32 degrees or below in every month in 1959, in 11 months in 1960, nine months in 1961, 11 months in 1962, and in eight months in 1963 (R.T. 4920) that the extreme minimum temperature from 1959 to 1963 was minus 32 degrees recorded in 1963 (R.T. - 4921), that the mean maximum temperature in January is somewhere between 34 and 36 degrees and the mean minimum temperature for January is 12 degrees (R.T. 4931).



## Development

The Gamble Ranch subdivision is being rapidly developed (Ex. 2-1058 & 2-1059, film strip, Frame 15)

The Gamble Ranch subdivision 'has become one of the largest, most exciting land development programs in the history of America' (Ex. 2-2-D, radio script)

"The gigantic Gamble Ranch development (is) already bursting at the seams with growth and activity" (Ex. 2-287V & 2-1059, film strip, Frame 23)

"We stand solidified and with the internal strength, vision and wealth to carry out our projected program" (Ex. 2-819A, P. 2)

"Each Gamble Ranch land purchaser is entitled to a Founder Membership in the new Gamble Ranch Club" (Ex. 2-128, color brochure)

"A beautiful ranch style club house is being planned, immediately adjacent to the new motel, restaurant and cocktail lounge" (Ex. 2-128, color brochure)

Gamble Ranch had surveyed and staked each parcel and constructed an access road thereto (Ex. 20-A, P. 2, Gazette 5-1-60)

Norman T. Rockel, General Manager of the companies successively promoting and selling Gamble Ranch, testified that at the end of December 1961 there was a minus cash availability of \$468,000.00, representing a deficiency in available cash for the various items planned and programmed, and that the projection was for a deficiency of \$902,000.00 at the end of 1963 (R.T. 5333 - 5334).

Blackwell testified that except for the motel and restaurant there were no other facilities constructed on the land being sold (R.T. 6156). He wrote to Byrnes at the Gamble Ranch office on April 3, 1962, "The office and Gazette have made a lot of promises but to date nothing was done except what was done by my family" (Ex. 2-690; R.T. 6157).

Davidson testified that a program to plant trees on the subdivided land ended when rabbits and cattle consumed the thousand to 1500 trees and because of the inadequate supply of water (R.T. 3510 - 3515), and that company officials had felt the cost of surrounding each tree with wire mesh was not justified (R.T. 3514).

W. H. Settlemyer, the surveyor hired by the company, testified he established only the section corners and quarters in some townships, that he never established the boundaries of any individual parcel of 40 acres or less, and that he ceased all surveying when the company failed to pay him (R.T. 5106 - 5109).

Blackwell testified the directional signs were section signs denoting four corners of a section, that they were erected only in certain areas where property owners could enter by road (R.T. 6173 - 6174).

Ray Blackwell and Albert W. Davidson, the promoters' representatives on the Gamble Ranch site, testified that "roads" on the subdivided





"With the access roads being in and these easy-to-read yellow directional signs being installed, it will be an easy task for each property owner to locate his property" (Ex. 2-204-A, Gazette 5-1-60)

"The Institute for Essential Housing... has available for qualified buyers a program of 100% home construction financing" (Ex. 2-178, Gazette, P. 4)

The Gamble Ranch development had the approval of the Government of the State of Nevada (Ex. 2-19, black & white brochure)

"Negotiations are currently being conducted with several industrial firms with respect to possible locations on the ranch under our Industrial Subsidization Program" (Ex. 2-191, Gazette, P. 1)

"To insure the rapid but orderly development of Gamble Ranch, no expense was spared. The world famous architectural firm, Victor Gruen Associates, have submitted master plans for suggested new communities within the ranch. Only after intensive research on the area did Gruen's expert staff submit their plans. A suggested new city, civic center, planned shopping centers to rise on the ranch" (Ex. 2-1058 & 2-1059, film strip, Frames 20 - 24)

land represented paths made by one pass of a road grader and that they needed constant re-grading to repair damage caused by flash flood and to scoop aside the powdery soil (R.T. 614 6142, 6166, and 3685).

The announced model home was never constructed (Ex. 2-204-A, Gazette of 4-1-60; R.T. 6168 - 6169).

The "new Montello lumberyard" had lumber available during construction of the motel but nobody ever offered to buy any lumber and the building housing the business burned down (Ex. 2-204-A, Gazette of 4-1-60; R.T. 6123 - 6124 and 6169).

Blackwell testified the Gamble Ranch Club house was never built (R.T. 6194 - 6195).

Clark testified the principals never authorized money for the development projects including the building of a club house, archery facilities, tennis facilities, badminton, oval track, skeet shooting, golf range and ski lift (R.T. 4114 - 4115).

Harold F. Ellwood, a purchaser with some farming experience, testified he entered into negotiations with company officials to establish a farm on his property with financial aid from the company, to the extent of \$10,000 initially for a well and farm equipment (R.T. 2886 - 2889). He also testified he established residence on his property in a house trailer, but left after 30 days when no financial assistance was forthcoming (R.T. 2891 - 2900)

G. L. Dirksen, Southwest district manager for the Institute for Essential Housing, testified that property owners desiring to build a home under the IEH program must be able to present a first deed of trust (R.T. 7993), that IEH had a secondary program under control of Universal CII whereby if equity in the land was sufficient in the eyes of the appraisal department





"Industry is being coaxed because of the favorable labor pool existing here" (Ex. 2-128, color brochure)

of Universal, IEH would finance the balance of the land with 7½ % down (R.T. 8006), but that the program never functioned in the Southwest district because Universal CII would not appraise equity in outlying areas (R.T. 8011). He also testified no applications for IEH financing were received from individual purchasers (R.T. 7998), or from the company (R.T. 8006).

Governor Sawyer testified he was never told his letter (Ex. 2-853 - 854) would be used in advertising or promotional material and that he never authorized such a use (R.T. 1550 - 1551). On July 14, 1961, Governor Sawyer wrote to Gamble Ranch, stating he had not endorsed the project in 1959 and did not endorse it on date of the latest letter (Ex. 2-1227; R.T. 1576).

Rockel testified there was no cash available from 1961 to 1964 to finance the industrial subsidization program (R.T. 5340 - 5341). As of September 27, 1961 the company acknowledged no manufacturing operations were being conducted on Gamble Ranch and that the company had not found an acceptable person or firm desiring to commence operations on the ranch and which it would be willing to subsidize (Ex. 1-261, P. 11).

Frank E. Hotchkiss, city planner and architect employed by Victor Gruen Associates, testified that in response to an accepted proposal submitted by his firm, schematic plans were prepared for a possible townsite and a small commercial center in the Montello area of Gamble Ranch (R.T. 1793 - 1798). He also testified his firm gave only preliminary advice to the promoters, that his firm did not spend a lot of time on the project and that its personnel did



not visit the ranch because the promoters never authorized the expense of travel (R.T. 1800 and 1908). Hotchkiss also testified Victor Gruen preliminarily advised the promoters that their method of selling 10, 20 and 40 acre parcels was inadvisable because they were too small for farming but too big for efficient development of utilities, roads and community services, that alternative methods of selling reshaped parcels were suggested and that Gruen's services terminated on April 15, 1960 (R.T. 1799 - 1801). Aldo Genova, architect associated with Victor Gruen, testified the Gruen sketches did not constitute a master plan but were merely preliminary plans leading to further study (R.T. 1927 - 1928).

#### Investment

"This is your ~~once~~-in-a-lifetime opportunity to invest in ranchland at a fraction of its eventual worth"  
(Ex. 2-19, black & white brochure)

"Your working investment in Gamble Ranch will bring you comfortable returns"  
(Ex. 2-1074, newspaper, P. 6)

"This is valuable ranchland that offers you security"  
(Ex. 2-19, black & white brochure)

(Gamble Ranch land)"is a solid investment"  
(Ex. 2-1-E, radio audio)

(Gamble Ranch land is) "a sound, solid investment in land"  
(Ex. 2-2-W, TV audio)

Stewart testified the selling price to Clejan of two and a half million dollars, represent a cost per acre of ten dollars and some odd cents, spread over every acre including improvements (R.T. 904).

The promoters sold the subdivided land at rates of \$3,000 to \$4,000 for 40 acres, \$1990 for 10 acres, and \$795 for 2½ acres (Ex. 2-19 to 2-41).

Gerald F. Trescartes of Elko, Nevada, called as the Government's expert appraiser, testified the highest and best use for Gamble Ranch land was for a large livestock operation, then applying to comparable sales in the area the carrying capacity of ranch land (animal units) the value of Gamble Ranch is placed at \$2,277.50 an acre, averaging out to \$10.33 an acre, including improvements, range rights, water rights and real estate (R.T. 6724 - 6727). He also testified he placed a value of \$10.00 per acre on subdivided Gamble Ranch land south of Montel based on comparable sales (R.T. 6733), that



(Gamble Ranch land) "boasts an investment potential unequalled anywhere in the west"

(Ex. 2-10)

"A profit potential second to none"

(Ex. 2-1058 & 2-1059, film strip, Frame 51)

(The sale of Gamble Ranch land is) "not a real estate promotion"

(Ex. 2-1074, newspaper, P. 6)

"This land is not to be sold on a typical 'subdivision' basis. You will find there are no gimmicks or false promises"

(Ex. 2-1074, newspaper, P. 24)

the accepted practice of real estate appraisal is to try to find the highest and best use for the land as a basis for appraisal (R.T. 6761), and that the fact the promoters of Gamble Ranch cut up a large piece of range land and sold it in small pieces would not increase the value in any fashion (R.T. 6763).

Elwood testified that at Rockel's direction he visited the Department of Agriculture in Reno to seek a loan for purposes of farming his subdivided land, and that he reported back to Rockel that the agency would not lend money on that land at all and questioned his interest in farming such land when he could buy land equal to it for 50 cents an acre (R.T. 2891 - 2892).

Donald E. Jacobson, manager of the Wells, Nevada, branch of the First National Bank of Nevada, testified his firm informed the promoters it would be unable to lend them money on accounts receivable because their type of operation is a speculative one (R.T. 4134).

Albert Williams, Vice President of the Nevada Bank of Commerce, testified his bank would not lend money to an individual wishing to pledge as primary collateral land south of Montello, and that it would not be an economical unit to make a loan on a small tract of that type of land (R.T. 4142).

## 8. Montello, Nevada

"...city ... an established community of homes, shops, restaurants, motels, schools (including a major high school)"  
(Ex. 2-128, color brochure)

(Montello has) "all normal shopping facilities"  
(Ex. 2-128, color brochure)

Postmaster Pearson testified the town of Montello had dwindled in size from about 600 persons in 1941 to about 60 families in 1959 to 1963 in a radius of 35 miles, that in Montello from 1959 to 1963 there were a cafe and bar, a bar, a general store, a service station-garage, the post office, the railroad station, and a Standard Oil bulk plant, and nothing else (R.T. 4943 - 4950). She also





(Montello is ) "small but already feeling the surge of expansion"

(Ex. 2-1058 & 2-1059, film strip, Frame 33)

"Living accommodations for personnel can be provided from rentals in the town of Montello"

(Ex. 2-819A, P. 2)

"An adequate Labor Pool is also readily available"

(Ex. 2-819A, P. 2)

"The town of Montello is... installing an improved water system"

(Ex. 2-195, P. 2)

0. Pictorial Promotional Material

The pictures in Gamble Ranch advertising material depicting green fields, flowing streams, and stands of trees were pictures of the land being subdivided and offered for sale.

(Ex. 2-1074, newspaper, P. 17 & 31; Ex. 2-1058 & 2-1059)

0. California Division of Real Estate

(The order prohibiting further sales of Gamble Ranch land in California) "has in no way affected the continued development of the ranch"

(Ex. 14, Ross letter to purchaser Burt)

testified the high school portion of the one school closed and students thereafter had to travel 106 miles, round trip, to Wells (R.T. 4950 - 4951). Mrs. Pearson also testified there were quite a few unoccupied homes in Montello, that some had not been in livable condition for some time, and that only one or two of them were in livable condition (R.T. 4968).

Mrs. Pearson testified that since years ago Montello residents have obtained their water from the Southern Pacific pipeline (R.T. 4948 - 4949).

Robert Ellis, whose Pace Productions produced the film strip, testified the land south of Montello flattens out into a plain with sagebrush on it and that is all (R.T. 2138), and that none of the film strip pictures are photographs thereof except perhaps the last two taken at sunset (R.T. 2088 - 2102). He also testified that the picnic scenes by streams were photographed near Crittenden Reservoir (R.T. 2093).

On July 16, 1962, the California Real Estate Commission filed an "Order to Desist and Refrain" from further sales of Gamble Ranch land in California (Ex. 1-1125). Robert Stein sales manager, testified he signed the accompanying "consent agreement" at Byrnes' behest (R.T. 4848 - 4851), and John W. Carey testified



"There is not one word in the order issued by the Real Estate Commissioner indicating any wrongdoing or misrepresentation by the company"  
(Ex. 15, Ross letter to purchaser Burton)

(The said order contains) no admissions of fraud or wrongdoing"  
(Ex. 17 & 41, Ross letters to purchasers Dykeman & Mc Eachern)

"The company withdrew its land for sale to California residents on a voluntary basis and has not at any time been charged with fraud or misrepresentations"  
(Ex. 39 & 66, Ross letters to purchasers Loswick & Rogers)

he was made an officer for the specific purpose of signing the document as "President" (R.T. 6255 - 6256).

The Order states that the company and all persons named, agree and consent "that each and all of the facts, conditions and circumstances legally required for the exercise by the Commissioner of the powers conferred upon him by Section 11019 of the Business and Professions Code and for the making of the Order hereinafter set forth pursuant to such section, exist. The accompanying "consent agreement" contains an almost identical provision (Ex. 1-1125).

On August 2, 1962, the California Real Estate Commission filed against the company an "Accusation" (Ex. 1-1124), charging it and its officers, directors and stockholders with conspiring to misrepresent Gamble Ranch land in sales to purchasers, and listing numerous representations in sales material which were fraudulent, false and untrue (R.T. 6272 - 6282).



APPENDIX F

Complaint Letter from File of Loswick

(Ex. 3-488)



San Francisco, 14 Calif.  
2231-19 ave. July 18, 1962

Pacific West. States Land Development  
Corp. of Nevada, Gamble Ranch.

3330 Geary Blvd.

San Francisco, Calif.

Dear Mr. Wise:

According to News report from  
the California Real Estate Commission,  
Mr. Wayne A. Savage, my long  
standing fears of your Company's  
misrepresentation, and outright  
fraud, has been well founded.  
On advice of my attorney, I have  
by serve notice, that I will  
institute Court proceedings against





you have not only to recover  
what I sent my wife and I  
have paid you, on this worthless  
bond, but also include a large  
suit also, if your Company do  
not feel well return all the  
money I have paid you. That you  
and your Company stand as this  
to you all persons, like my  
self and my wife, who have  
been taken also as a bond, is to  
be my understanding. The  
went into this land, on the strength  
of our confidence that I had in  
Mr. Rosenberg, and I have now  
now. That you are all a bunch  
of thieves and scoundrels to me  
and my family. I have  
and I have no more to say,  
and I have no more to say.



I have your receipts  
of receipting from me,  
\$ 404.68 which

Monies - Now I  
shall expect you to  
return to me forth-  
with! Otherwise I  
shall institute suit against  
you immediately.

A. Waller Rosworsky.



APPENDIX G

Complaint Letter from Tex Munson

(Ex. 3-1335)





155 S. Sultana Avenue  
Ontario, California  
31 October, 1961

Gamble Ranch Investment Corp.  
9412 Wilshire Boulevard  
Beverly Hills, California

Dear Mr. Alan Scale:

I am sorry that I have to write this letter to you. I have been up to Gamble Ranch recently and am very deeply disappointed with what I saw. You had told me of the roads that were in, the water skiing facilities and that the property was staked out and none of this was true. The property was pointed out to me as being approximately there but no property stakes. The only power lines were those that were available for the restaurant and those people lines there.

I have discussed this with some friends of mine before I bought the land.



it will and myself feel happy that this  
was misrepresentation on your behalf to make  
this purchase therefore I wish to cancel  
my Contract with your Bro and would like  
a refund on the down payment and there-  
fund if the monthly payments made to date.

In advance I am thank you and re-  
main.

Sincerely yours

Steph. G. Lawrence



APPENDIX H

Governor Sawyer's Complaint Letter

(Ex. 2-854-B; 2-1227)



July 14, 1961

*Pending*  
*7/26/61*

Mr. Arnold Clejan  
9412 Wilshire Boulevard  
Beverly Hills, California

Dear Mr. Clejan:

You will recall that in September of 1959, I called your attention to the fact that you were using a form letter which you had received from me relative to the Gamble Ranch property promotion in newspaper advertising and in your brochure and other ways which were totally and completely distorted and unacceptable to me. At that time, I pointed out to you that my letter did not constitute an endorsement and that it was being used improperly and in an unauthorized manner. I was later assured by you that the letter would not be used again.

I am advised now that a Mr. Ray Asin in your office, at the above address, uses my name frequently in his sales pitch; that you have an enlargement of my letter on the wall; that in a colored slide presentation my letter is quoted in full; that it is stated that I had endorsed the project 100% and that it would be political suicide if this were not true; that the Gamble people were conferring with me regarding a multi-million dollar gaming establishment and had my assurance that such would become a reality.

I have looked over your new brochure and I am advised that not only some of the material there, but also some of the statements made in your letters are, in all likelihood, untrue and misleading.

I am further advised that Mr. Ralph Weiss, 3330 Geary Boulevard, San Francisco 18, California, is following much the same procedure as described in your Los Angeles office; further, that he is making a number of statements that are untrue and misleading regarding the availability of water, population of the towns, the type of soil, availability of power, and the tax structure in the State of Nevada.





Mr. Arnold Clejan  
#2, July 14, 1961

In the light of all of the above matters, I am convinced that a thorough and complete investigation should be made of this operation. Since you are assuming that my letter constitutes an endorsement, I am requesting now that you return the original letter. I am also advising you that neither you, nor your agents, nor your brokers, should use my name or refer to the letter in any respect. Assuming that at any time I had endorsed this project, which I did not, I hereby advise you that I do not endorse it now; that I have grave doubts concerning it and that any statements or representations to the contrary will be considered as false and misleading.

You may recall that I have a copy of a letter to you from Mr. Keith Williams, your then attorney, under date of September 14, 1959, in which he sets out very clearly my position and relates a conversation he had with you concerning the matter, a portion of which reads as follows: "you would definitely not put the letter to any use contrary to the express wishes of Governor Sawyer."

I advise you that if there is any further use made of my name, or the use of the name of any other representative of the State of Nevada, including that of Mr. Jack Lehman, or any further use of the letter, that I shall take whatever steps are necessary to properly advise the people of California as to the situation.

In the meantime, I am hopeful that a complete and thorough investigation will be made of this entire matter.

Very truly yours,

Grant Sawyer  
Governor

GS:hzm

CC to: Mr. Gerald J. McBride, Secretary  
Nevada Real Estate Commission, Carson City

Mr. Ray Asin, 9412 Wilshire Boulevard, Beverly Hills

Mr. Ralph Weiss, 3330 Geary Boulevard, San Francisco 18

The Honorable W. A. Savage, Commissioner, Division of Real Estate  
Room 8003, State Building No. 2, First & Broadway, Los Angeles

BCC to Mr. Chris Sheerin, Elko Free Press, Elko  
Mr. Warren Monroe, Elko Independent  
Mr. Charlie Triplett, Wells Progress, Wells  
Mr. Jack Lehman, Director, Economic Development

